

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



# 76-2103

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 76-2103

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ADDEQUAYE ALLOTEY,

Petitioner - Appellant,

- against -

UNITED STATES OF AMERICA,

Respondent - Appellee.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

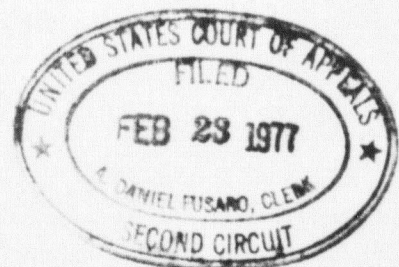
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APPELLANT'S APPENDIX

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DAVID G. TRAGER,  
United States Attorney,  
Eastern District of New York.

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## TABLE OF CONTENTS

	PAGE
Docket Entries .....	A-1
Indictment .....	A-6
Minutes of Plea, February 21, 1975 .....	A-16
Minutes of Sentence, March 21, 1975 .....	A-42
Opinion and Order of Judge Dooling .....	A-104
Judgment and Commitment .....	A-124
Noti of Appeal .....	A-125

73 CR 84

DOOLING, J.

~~ROSLING, J.~~

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U. S.: F 725,601
vs.		DJ #36-51-78
ENID ALLOTEY and		for both defts:
ADDEQUAYE ALLOTEY		Gustave Gerber
		401 Broadway, NYC.
		966-9840
		For Defendant: Sidney
		50 Broad St.- N.Y.,
		422-9629
Mail Fraud.		

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	
Fine,					
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					

DATE	PROCEEDINGS
1-22-73	Before WEINSTEIN J - Indictment filed and ordered sealed by the Court. Bench Warrants Ordered as to all defts. 9 Exemplified copies and 6 certified copies of the Indictment ordered.
1-23-73	Bench Warrants Issued for defts.
1-23-73	By ROSLING J - Order filed that the above sealed indictment be opened by the Clerk of the Court for limited purpose of re-producing as many copies of the indictment as are necessary for extradition proceedings concerning fugitives named as defts. and further Ordered that after the above reproduction has been completed, the indictment be resealed and not made public until further order from this Court.
1-24-73	Two affidavits of Emanuel Moore filed.
1-24-73	Bench Warrant Issued as to last in f.

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DATE	PROCEEDINGS
1-24-73	21 Volumes of Grand Jury Minutes filed.
1-26-73	Affidavit of ALEXANDER GOLODETZ filed.
1-30-73	Affidavit of STANLEY RESNICK filed.
3/27/73	By ROSLING, J.- Order filed, that indictment No. 73CR84 filed by the Go on the 22nd of January, 1973, be unsealed and made available to the pub as part of the file XX.
8-2-74	Bench warrant retd and filed- executed (ALLOTEY)
8-2-74	Before DOOLING, J.- Case called- Defts produced on a bench warrant- Sidn L. Katz present as counsel at this time for arraignment proposes only- Defts arraigned and each enter plea of not guilty- Defts to be released upon each deft posting a \$250,000 surety bond
8-2-74	Notice of appearance filed(both defts)
8-23-74	Before Dooling J - case called - defts & counsel-Gustave A. Gerber present - conference set for Oct. 7, 1974 at 4:30 PM. deft Enid Allotey moves for reduction in bail - motion denied - defts contd in custody.
8-23-74	Notice of Appearance filed (both defts)
8-29-74	Stenographers Transcript dated 8-274 and 8-23-74 filed
10-7-74	Before Dooling J - case called - defts & counsels Gustave Gerber present. Conference held and adjourned - Counsels are to present telephonic status reports on 10-11-74.
10/15/74	Before DOOLING, J.- Case called- Report on discovery made
10/29/74	Before DOOLING, J.- Case called- Defts and counsel present-Conference held counsel for deft and defts report that they will not be ready for trial on 11/7/74- Conference concluded- Trial adjd without date-Parties to report on 11/12/74- Defts contd in custody
11/1/74	Memorandum scheduling pre-trial conference for 11/15/74 at 9:45 A.M. filed
12-74	Before DOOLING J - case called - defts present - counsel not present - Court again advises the defts of availability of additional counsel pursuant to the C.J.A. Defts decline additional counsel - defts move for a reduction in bail - motion denied.
11/15/74	Stenographers Transcript dated 11/12/74 filed
11-19-74	Memorandum to all counsel filed received from Chambers pre trial conference scheduled for Jan. 6, 1975 at 9:45 am. Defts should attend.
11-18-74	Before DOOLING J - case called - adjd to Jan. 6, 1975 for status report.
12-2-74	Govts Notice of Readiness for Trial filed.
12-6-75	Before DOOLING J - case called - defts & counsel Gustave Gerber present - scheduled for status report on Feb. 3, 1975; scheduled for trial on Mar. 3, 1975; defts renew motion for a reduction in bail - motion denied.

3

DIST/OFFICE	DOCKET YR. NUMBER	FILING DATE MO DAY YEAR	J	N/S	O	R	R	23	S	DEMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET YR. NUMBER
207-1	75 2168	12 24 75	2								0713		DOOLING

PLAINTIFFS

DEFENDANTS

ADDEQUAYE ALLOTEY

UNITED STATES OF AMERICA

Pursuant to Sec. 2255  
(Related Case 73-CR-84)

CAUSE

ATTORNEYS

SIDNEY L. KATZ, ESQ.  
50 Broad St.,  
New York, N.Y. 10004  
(212) 422-9629

<input type="checkbox"/> CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C. D. NUMBER	CARD	DATE MAILED
				JS-5	
				JS-6	

75C 2168

ADDEQUAYE ALLOTEY vs. THE U.S.A.

DATE	NR.	PROCEEDINGS
2-24-75		NOTICE OF MOTION FILED for an order vacating judgment of conviction, etc., (Re: 73-CR-84) (1)
4-13-76		Letter from Sidney L. Katz dtd 4-12-76 filed. (2)
8-5-76		Before DOOLING, J.- Case called for hearing
8-6-76		Before DOOLING, J.- Case called Hearing resumed Petitioner rests
8-9-76		Before DOOLING, J.- Case called Hearing resumed Respondent rests Both <del>xxxx</del> sides rests Petitioner's final argument Respondent's final argument Hearing concluded Decision reserved
8-31-76		By DOOLING, J-Memo & Order dtd 8-31-76 denying the motion to vacate sentence filed. p/c (3)
9-1-76		Judgment dtd. 8-31-76 that the petitioner take nothing of the respondent and that the motion to vacate the judgment of conviction entered on 3-21-75 and to set aside the plea of guilty entered 2-21-75 is denied filed. (4)
9-1-76		Letter dtd 8-30-76 to J. Dooling from Albert L. Merlis filed. (5)
9-2-76		Notice of appeal filed. Copy mailed to C of A. (6)
9-8-76		BY DOOLING, J. - Order dtd 9-3-76 permitting appellant to prosecute proceeding without prepayment of fees filed. Copy sent to CofA. (7)
9-13-76		Copy of civil appeal scheduling order filed. (8)
10-12-76		Sten. transcripts dtd. 8-6-76 & 8-9-76 filed. (9/10)
10-22-76		Sten. transcript dtd. 8-5-76 filed. (11)
10-26-76		Voucher for <del>EXPENSE</del> expert services filed. (12)
12-1-76		Above record with exhibits certified and mailed to the Court of Appeals
12-9-76		Record on appeal rec'd by C of A, acknowledgment filed. (13)

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EEB:BAW:lag  
P. #75,601  
DJJ 65-51-780

41 6

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

73 CR 841

----- X  
UNITED STATES OF AMERICA

- against -

Cr. No. \_\_\_\_\_  
(18 U. S. C., §1341, §1343,  
and §2)

ENID ALLOTEY and  
ADDEQUAYE ALLOTEY, doing business as  
Stephen and Company,

Defendants.

----- X  
THE GRAND JURY CHARGES:

COUNTS ONE THROUGH TWENTY SEVEN

(1) That during the period of time hereinafter stated within the Eastern District of New York, and elsewhere, the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY were the sole partners of and doing business as Stephen and Company, 251 St. Marks Place, Staten Island, County of Richmond, New York.

(2) That prior to the 1st day of September 1970 and continuing thereafter until on or about the 30th day of June 1971, ENID ALLOTEY and ADDEQUAYE ALLOTEY, named herein as defendants did unlawfully, wilfully and knowingly devise and intend to devise a scheme and artifice to defraud the La Camara Oficial Agricola de Comercia e Industria de Fernando Po - Santa Isabel (the official Chamber of Agriculture of Fernando Po - Santa Isabel, Republic of Equatorial Guinea), hereinafter referred to as CAMARA of the Government of the Republic of Equatorial Guinea, and to obtain approximately Two Million Two Hundred and Twenty Five Thousand Dollars (\$2,225,000.00) from CAMARA of the

Government of Equatorial Guinea by means of false and fraudulent pretenses, representations and promises, well knowing at the time that the pretenses, representations and promises would be and were false and fraudulent when made, which scheme and artifice is set forth below.

*Find up*  
(3) It was part of said scheme and artifice to defraud that the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, doing business as Stephen and Company did fraudulently and knowingly, by means of false promises, statements and misrepresentations, obtain two (2) shipments of Fernando Po cocoa beans from CAMARA of the Government of the Republic of Equatorial Guinea, without intent to make full payment and thereafter sold and delivered the aforementioned cocoa beans to the General Cocoa Company, 82 Wall Street, New York, New York.

*Find up*  
(4) It was part of the scheme and artifice to defraud that the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, doing business as Stephen and Company would send lulling cables, letters and telegrams to various banking institutions in the United States that acted as agents for CAMARA of the Government of the Republic of Equatorial Guinea causing them to expect payment in full at a future date, when in fact the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, doing business as Stephen and Company were converting to their own use the proceeds realized from the sale of the two (2) shipments of cocoa beans to General Cocoa Company.

*Call midwell*  
(5) It was a further part of the scheme and artifice to defraud that on or about September 1, 1970, the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY sent an application by mail from the Eastern District of New York to CAMARA of the Government of the Republic of Equatorial Guinea, offering to absorb and dispose of that country's surplus cocoa for the year

1970. Pursuant to the aforementioned application, the Charge de Affairs, Mission to the United Nations of the Republic of Equatorial Guinea, sent a letter by mail to the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, at 251 St. Marks Place, Staten Island, New York, within the Eastern District of New York, authorizing them to import two thousand (2,000) metric tons of Fernando Po cocoa beans during November and December 1970 for marketing in the United States.

(6) It was a further part of the scheme and artifice to defraud that on or about September 14, 1970, the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY filed partnership papers within the Eastern District of New York in the office of the County Clerk, Richmond County, Staten Island, New York, under the name of Stephen and Company, 251 St. Marks Place, Staten Island, New York.

(7) It was a further part of the scheme and artifice to defraud that on or about September 14, 1970, the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, doing business as Stephen and Company contracted to sell a shipment of two thousand (2,000) metric tons of Fernando Po cocoa beans to General Cocoa Company, 82 Wall Street, New York, New York.

(8) It was further part of the scheme and artifice to defraud that on or about November 2, 1970, the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY agreed by cablegram to buy from CAMARA of the Republic of Equatorial Guinea two thousand (2,000) metric tons of Fernando Po cocoa beans at a price equal to approximately thirty four cents (\$.34) per pound.

9. It was a further part of the scheme and artifice to defraud that on or about January 5, 1971, the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, doing business as Stephen and Company received by mail from CAMARA of the Republic

of Equatorial Guinea the original shipping documents for the afore-said two thousand (2,000) metric tons of Fernando Po cocoa beans and subsequently presented the shipping documents to the General Cocoa Company for payment.

10. It was a further part of the scheme and artifice to defraud that on or about January 12, 1971, the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, doing business as Stephen and Company received a check from the General Cocoa Company in the amount of Eight Hundred and Fifty Eight Thousand Six Hundred and Seventy Five Thousand Dollars (\$858,675.00), which represented 80% of the total price of the first shipment of Fernando Po cocoa beans.

11. It was a further part of the scheme and artifice to defraud that on or about March 18, 1971, the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, doing business as Stephen and Company received another check from General Cocoa Company in the amount of approximately One Hundred Fifty Two Thousand Eighty Dollars and Fifty Two Cents (\$152,080.52), as final payment for the first shipment of Fernando Po cocoa beans. As of this date, the defendants received a total of approximately One Million Fifteen Thousand Seven Hundred Fifty Five Dollars and Ninety Three Cents (\$1,015,755.93), and did not make or attempt to make payment to CAMARA of the Republic of Equatorial Guinea for the shipment of cocoa beans.

12. It was a further part of the scheme and artifice to defraud the Republic of Equatorial Guinea that on or about December 24, 1970, the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, doing business as Stephen and Company entered into a second contract to sell to General Cocoa Company an additional two thousand (2,000) metric tons of Fernando Po, Superior 5, Cocoa Beans. The defendant ENID ALLOTEY and the

defendant ADDEQUAYE ALLOTEY entered into this contract knowing that they were committed to a price of approximately thirty four cents (\$.34) a pound with CAMARA of the Republic of Equatorial Guinea and knowing that at the time of the contract, the current market value of cocoa futures was approximately twenty eight cents (\$.28) a pound and steadily declining.

13. It was a further part of the scheme and artifice to defraud that on or about March 29, 1971, General Cocoa Company issued a check in the amount of Seven Hundred Forty Nine Thousand Eight Hundred Seventy Four Dollars and Seventy Cents (\$749,874.70) to the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, doing business as Stephen and Company, as an advance on the second shipment of cocoa beans. On or about March 31, 1971, the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, doing business as Stephen and Company issued their own check in the amount of Seven Hundred Forty Nine Thousand Eight Hundred Seventy Four Dollars and Seventy Cents (\$749,874.70) to CAMARA of the Republic of Guinea through the Bank of Montreal, in order and for the sole purpose of securing the original shipping documents for the second shipment of Fernando Po cocoa beans and turning them over to General Cocoa Company to obtain payment for themselves.

14. It was a further part of the scheme and artifice to defraud that on or about March 31, 1971, General Cocoa Company issued to the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, doing business as Stephen and Company an additional check in the amount of Ninety Five Thousand Five Hundred Eighteen Dollars and Forty Seven Cents (\$95,518.47) as part payment upon the second shipment of cocoa beans.

15. It was a further part of the scheme and artifice to defraud that on or about April 20, 1971, General Cocoa Company

issued to the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, doing business as Stephen and Company a check in the amount of Twelve Thousand Seven Hundred Eighty Five Dollars and Thirty Two Cents (\$12,785.32), which represented the final payment for the second shipment of cocoa beans.

16. On or about the dates hereinafter set forth, within the Eastern District of New York, the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, doing business as Stephen and Company, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, unlawfully, wilfully and knowingly did place and cause to be placed in post offices and authorized depositories for mail matter, various letters to be sent and delivered by the Post Office Department as hereinafter set forth in Counts One through Six.

<u>COUNT</u>	<u>DATE</u>	<u>ADDRESSEE</u>
1	October 1, 1970	Camara Official Agricola Santa Isabel de Fernando Poo Republic of Equatorial Guinea
2	November 5, 1970	Camara Official Agricola Santa Isabel Fernando Poo Republic of Equatorial Guinea
3	November 16, 1970	Camara Official Agricola Santa Isabel de Fernando Poo Republic of Equatorial Guinea
4	November 18, 1970	Community National Bank & Trust Company of New York Staten Island, New York 10304
5	January 11, 1971	Community National Bank And Trust Company 155 Vanderbilt Avenue Staten Island, New York 10304
6	March 16, 1971	Community National Bank & Trust Company 155 Vanderbilt Avenue Staten Island, New York 10304

COUNTS SEVEN THROUGH TWENTY SEVEN

1. The Grand Jury repeats and realleges as constituting the scheme and artifice to defraud all of the allegations contained in paragraphs one through fifteen of Counts One through Six of this indictment.

2. On or about the dates hereinafter set forth, the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, doing business as Stephen and Company in furtherance of the aforesaid scheme and artifice to defraud, and attempting to do so, unlawfully, wilfully and knowingly did take and receive within the Eastern District of New York various letters and mail matter that were delivered by the Post Office Department as hereinafter set forth in Counts Seven through Twenty Seven.

<u>COUNT</u>	<u>DATE</u>	<u>ADDRESSEE</u>
7	September 14, 1970	Stephen and Company 251 St. Marks Place St. George, Staten Island New York, N. Y. 10301
8	October 9, 1970	Messers Stephen & Company 251 Saint Marks Place Saint George Staten Island New York 10301
9	December 19, 1970	Messers Stephen & Company 251 Saint Marks Place Staten Island, New York 10301
10	March 5, 1971	Stephen & Company 251 Saint Marks Place Staten Island, New York 10301
11	September 18, 1970	Stephen & Company 251 St. Marks Place St. George Staten Island 10301
12	September 18, 1970	Stephen & Company 251 St. Marks Place St. George Staten Island, New York 10301
13	December 18, 1970	Mrs. Enid Allotey Stephen and Company 251 St. Marks Place St. George, Staten Island New York 10301

<u>COUNT</u>	<u>DATE</u>	<u>ADDRESSEE</u>
14	October 28, 1970	Stephen & Company 251 St. Marks Place Staten Island, New York 10301
15	December 1, 1970	Stephen and Company 251 St. Marks Place Staten Island, New York 10301
16	February 1, 1971	Stephen & Company 251 St. Marks Place Staten Island, New York 10301
17	January 18, 1971	Mrs. Enid Allotey 251 St. Marks Place Staten Island, New York 10301
18	January 6, 1971	Stephen & Company 251 St. Marks Place St. George, Staten Island New York 10301
19	February 2, 1971	Stephen & Company 251 St. Marks Place St. George, Staten Island New York 10301
20	December 1, 1970	Mrs. Allotey Stephen And Company 251 St. Marks Place Staten Island, New York 10301
21	December 8, 1970	Mrs. Allotey Stephen And Company 251 St. Marks Place Staten Island, New York 10301
22	February 24, 1971	Stephen & Company 251 St. Marks Place Staten Island, New York
23	April 28, 1971	Stephen & Company 251 St. Marks Place Staten Island, New York
24	April 16, 1971	Mrs. Enid Allotey Stephen and Company 251 St. Marks Place Staten Island, New York 10301
25	May 10, 1971	Stephen & Company 251 St. Marks Place Staten Island, New York 10301
26	January 29, 1971	Stephen & Company 251 St. Marks Place St. George, Staten Island 10301
27	May 24, 1971	Stephen & Company 251 St. Marks Place St. George, Staten Island 10301

(Title 18 United States Code, Sections 1241 and 2.)

COUNTS TWENTY EIGHT THROUGH THIRTY EIGHT

1. The Grand Jury repeats and realleges as constituting the scheme and artifice to defraud all of the allegations contained in paragraphs one through fifteen of Counts One through Six of this indictment.

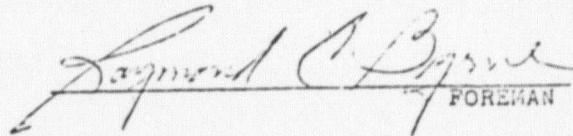
2. On or about the dates hereinafter set forth, within the Eastern District of New York, the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, doing business as Stephen and Company, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so did transmit and cause to be transmitted in interstate and foreign commerce by means of wire communication, that is, by cables, telegrams and telephone communications, certain writings, signs, signals and sounds as follows:

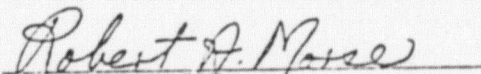
<u>COUNT</u>	<u>DATE</u>	<u>TRANSMISSION</u>	<u>RECIPIENT OR ADDRESSEE</u>
28	Nov. 14, 1970	Cable relayed by phone	Camara Official Agricola c/o Banco Exterior de Espana Santa Isabel de Fernando Poo Republic of Equatorial Guinea
29	Nov. 23, 1970	Cable relayed by phone	Camara Official Agricola c/o Banco Exterior de Espana Santa Isabel de Fernando Poo Republic of Equatorial Guinea
30	Nov. 20, 1970	Cable	Costephen, New York
31	Dec. 29, 1970	Cable	Costephen, New York
32	Feb. 23, 1971	Cable	Costephen, New York
33	June 12, 1971	Cable	Official Agricultural House Santa Isabel of Fernando Poo Republic of Equatorial Guinea
34	Nov. 2, 1970	Cable	Camara Official Agricola Santa Isabel Fernando Poo Republic of Equatorial Guinea
35	Feb. 27, 1971	Telephone	Enid Allotey, Bahama Islands

<u>COUNT</u>	<u>DATE</u>	<u>TRANSMISSION</u>	<u>RECIPIENT OR ADDRESSEE</u>
36	March 2, 1971	Telephone	Enid Allotey, Bahama Islands
37	March 21, 1971	Telephone	Enid Allotey, Bahama Islands
38	Feb. 26, 1971	Telephone	Enid Allotey, Bahama Islands

(Title 18 United States Code, Sections 1343 and 2.)

A TRUE BILL.

  
FOREMAN

  
ROBERT A. MORSE  
United States Attorney  
Eastern District of New York

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

A 16

3 -----X  
4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 - against -

73 CR 84

7 ENID ALLOTEY and ADDEQUAYE  
8 ALLOTEY D/B/A/ STEPHEN AND  
9 COMPANY,

10 Defendants.  
11 -----X

12 United States Courthouse  
13 Brooklyn, New York

14 February 21, 1975  
15 4:15 p.m.

16  
17 B e f o r e :

18 HON. JOHN F. DOOLING, JR., U. S. D. J.  
19

20  
21 ILENE GINSBERG  
22 ACTING OFFICIAL COURT REPORTER  
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A P P E A R A N C E S :

DAVID G. TRAGER, U.S. ATTORNEY

BY: JOSEPH RYAN, AUSA

GUSTAVE A. GERBER, ESQ.  
Attorney for defendants

1  
2 THE CLERK: USA V. ENID ALLOTEY  
3 and Addequaye Allotey d/b/a Stephen and  
4 Company.

5 MR. RYAN: Good afternoon, your  
6 Honor.

7 THE COURT: Good afternoon, Mr. Ryan.

8 MR. GERBER: Good afternoon, your  
9 Honor.

10 My appearance for the defendant,  
11 both defendants, Gustave A. Gerber, 401  
12 Broadway, Manhattan.

13 MR. RYAN: Your Honor, I think the  
14 record should show that today we were scheduled  
15 to have a pre-trial conference for the marking  
16 of exhibits.

17 THE COURT: Yes.

18 MR. RYAN: I think the record should  
19 show that U.S. Government representatives,  
20 last week went to Freeport in the Bahamas  
21 and obtained material evidence to this prosecu-  
22 tion; that on Wednesday of this week the  
23 documentation obtained from our Bahama trip  
24 were given to Mr. Gerber; that on Thursday  
25 of this week we met with the defendants in

1  
2 the presence of their counsel and outlined  
3 to them the evidence that we had developed  
4 from our Bahamian trip.

5 We spent about four hours yesterday  
6 afternoon, concerning all aspects of this  
7 case, in free exchange of thought about the  
8 evidence and what really went on and today  
9 we have been meeting with the the defendants  
10 and their counsel since eleven o'clock this  
11 morning, through lunch until this hour and  
12 we have discussed this case time and again  
13 and at this point I think after all of these  
14 discussions Mr. Gerber has an application.

15 MR. GERBER : Yes.

16 If your Honor please, if I may, on  
17 behalf of the defendants, both defendants,  
18 I respectfully submit the application to your  
19 Honor that they be permitted to withdraw their  
20 pleas of not guilty as they relate to count  
21 thirty-two of the indictment and that they  
22 offer to now plead guilty to that count and  
23 the facts attendant therein.

24 THE COURT: Well, Mr. and Mrs. Allotey,  
25 you heard what Mr. Gerber has said on your

1  
2 behalf. Is that what you do wish to do?

3 MRS. ALLOTEY: Yes.

4 MR. ALLOTEY: Yes, your Honor.

5 THE COURT: I wonder if you could  
6 move your chair well up to the front. I  
7 don't think you had better stand, Mr. Allotey,  
8 but if you can have your chair moved well  
9 up to the front here, so you can hear clearly.

10 Before I accept your pleas of guilty  
11 I want to make sure that you do understand  
12 the nature of the charge and the consequence  
13 of your pleading guilty to it.

14 Now, I am sure you have been over this  
15 indictment with Mr. Gerber many times and you  
16 are both people of considerable intelligence  
17 and I think understand the charge very clearly  
18 and indeed, that is part of the reason why you  
19 have been so insistent as to some of these  
20 points that have been explored over the last  
21 couple of days.

22 However, as you know, the indictment  
23 charges a scheme to use the mails and wire  
24 services, which would include cables and  
25 telephones, in the perpetration of a scheme to

1  
2 defraud and the alleged victim of fraud is  
3 La Camera Oficial Agricola de Comercia e  
4 Industria de Fernando Po-Santa Isabel, which  
5 is the official Chamber of Agriculture of  
6 Fernando Po-Santa Isabel, Republic of  
7 Equatorial Africa and what we are concerned  
8 with is pleading guilty.

9 Now, this is the way the statute works  
10 out.

11 You are charged with having sent a  
12 telegram or otherwise using the mails, telephone  
13 or international cables as a part of the process  
14 of perpetrating a scheme and here we are dealing  
15 with a cable of February, 1971, which was sent  
16 in the course of this scheme.

17 Now, the particular point on which we  
18 come down here is, I think, best reflected in  
19 paragraph four of the indictment and I am sure  
20 we all know what the general facts were, the  
21 making of the arrangements with Camera to  
22 put you into the position to offer the first  
23 and second quantities of cocoa for sale, the  
24 making of the re-sale agreement with General  
25 Cocoa Company, the receipt of certain payments,

1  
2 not in full for the cocoa and the fact that  
3 those ~~were not~~ payments received, were not  
4 remitted to Camera at the times that we are  
5 dealing with.

6 Now, the time to remit was, in the  
7 opinion of Camera, apparently expired and  
8 they wanted their money.

9 At that point the charge is that it  
10 was part of the scheme and artifice to defraud;  
11 that both of you doing business as Stephen and  
12 Company would send billing reassuring cables,  
13 letters and telegrams to various banking insti-  
14 tutions in the United States that acted as  
15 agents for Camera of the Government of the  
16 Republic of Equatorial Africa, causing them  
17 to expect payment in full at a future date, when  
18 in fact, you, doing business as Stephen and  
19 Company were converting to your own use, the  
20 proceeds realized from the sales of the ship-  
21 ments of cocoa and after February 23, 1971.  
22 We would be concerned with the proceeds of the  
23 first sale since no proceeds of the second sale  
24 were yet in hand.

25 Now, the charge of count thirty-two is

1  
2 specifically that the cables of February 23,  
3 1971 were part of lulling the Camera into  
4 not demanding immediate payment, going to  
5 lawyers, attaching your bank accounts and  
6 all that. So that they were, as it were,  
7 defrauded of their right to move forward  
8 and collect before the money had been spent.  
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13 (continued on next page)  
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2 Now, do you understand that part of  
3 the charge?

4 MRS. ALLOTEY: Yes.

5 MR. ALLOTEY: Yes, your Honor.

6 THE COURT: And that is, as I understand  
7 it, the part you are, or have been talking about  
8 with Mr. Ryan and upon Mr. Gerber's advice, you  
9 are prepared to plead to.

10 There are other parts of this you are  
11 in violent disagreement about.

12 However, that part you agree; that these  
13 reassuring cables and assurances of prompt pay-  
14 ment were being sent with the consequence that  
15 Camera was not taking action to seize your  
16 bank accounts or do any of the other things they  
17 might have done had they been alerted to what  
18 they might have thought was the risk of non-  
19 payment, implicit in your situation at that time.

20 You understand that, I am sure.

21 MR. ALLOTEY: Yes, your Honor.

22 MRS. ALLOTEY: Yes sir.

23 THE COURT: Now, if you stay with and  
24 keep your present pleas of not guilty, you  
25 are entitled to a public trial by an impartial

1 jury. You understand that I am sure.

2 The trial would be held right here  
3 in this courtroom, I think a week from  
4 Monday. You understand that?

5 MRS. ALLOTEY: Yessir.

6 MR. ALLOTEY: Yes.

7 THE COURT: At any such trial you are  
8 entitled to the assistance of counsel and as  
9 I have earlier explained to you, if you cannot  
10 afford counsel or can no longer afford counsel  
11 than the Court will appoint counsel under the  
12 Criminal Justice Act to represent you. Do  
13 you understand that?

14 MR. ALLOTEY: Yes sir.

15 MRS. ALLOTEY: Yes.

16 THE COURT: Now, if you decide to go  
17 to trial then, as I am sure Mr. Gerber has  
18 told you, the Government must bring in to  
19 open court here and confront you with the  
20 witnesses upon whose testimony it relies to  
21 get a conviction. That is so you can see  
22 that they are cross examined in the presence  
23 of the jury and so that if they undertake to  
24 lie about you, you can face them down here in  
25

1  
2 open court and in the presence of the jury.

3 Do you understand this?

4 MR. ALLOTEY: Yes.

5 MRS. ALLOTEY: Yes.

6 THE COURT: Now, if you stay with your  
7  
8 pleas of not guilty to all counts you are  
9 entitled to have subpoenas issued to compel  
10 the attendance of those witnesses who the  
11 United States can compel to attend, to make  
12 them come into court so you can put them on  
13 the witness stand on your own behalf if any  
14 such witnesses there be. You understand that?  
15 That has been explained to you?

16 MR. ALLOTEY: Yes, your Honor.

17 MRS. ALLOTEY: Yes sir.

18 THE COURT: If you go to trial, at the  
19 conclusion of all the evidence, the Court must  
20 instruct the jury that it cannot convict you  
21 without being satisfied of your guilt beyond a  
22 reasonable doubt. Do you understand that?

23 MR. ALLOTEY: Yes.

24 MRS. ALLOTEY: Yes.

25 THE COURT: Now, if you go to trial,  
you have and each of you has a right to testify,

1  
2 take the witness stand and testify on your  
3 own behalf and equally, you have the right  
4 not to testify. You have a 5th Amendment  
5 right to stay off the witness stand since  
6 you cannot be compelled to be witnesses against  
7 yourselves in a criminal prosecution.

8 If you decide not to testify then you  
9 are entitled to have the Court instruct the  
10 jury that the jury may not draw any inferences  
11 unfavorable to you from the fact that you did  
12 not take the witness stand and testify and  
13 the Court instructs the jury that they are not  
14 to discuss that aspect of the matter at all since  
15 the burden of proof is on the Government. You  
16 do not have to prove your innocence. The Govern-  
17 ment must prove your guilt.

18 Therefore, whether you take the witness  
19 stand or not, there can be no finding of any  
20 inference against you and that must be explained  
21 to the jury.

22 MRS. ALLOTEY: Yes.

23 MR. ALLOTEY: I understand, your Honor.

24 THE COURT: Now, if you do plead guilty  
25 you must understand that you cannot appeal --

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MRS. ALLOTEY: Yes.

THE COURT: Now, understanding these things, do you wish to enter a plea of guilty to count thirty-two of this indictment, Mrs. Allotey?

MRS. ALLOTEY: Yes.

MR. ALLOTEY: Yes, your Honor.

THE COURT: Have any threats been made against you by anyone to get you to plead guilty here?

MRS. ALLOTEY: No.

MR. ALLOTEY: No sir.

THE COURT: Are you pleading guilty voluntarily?

MRS. ALLOTEY: Yes, to thirty-two, yes.

MR. ALLOTEY: Yes.

THE COURT: Have any promises been made to you other than at sentence time the remaining counts of the indictment, the remaining thirty-seven counts of the indictment will be dismissed?

MRS. ALLOTEY: No, no promises.

THE COURT: In other words, at sentence

1  
2 time the other counts of the indictment will  
3 be dismissed.

4 MR. ALLOTEY: My understanding, your  
5 Honor, is that this is the only count we are  
6 guilty of --

7 THE COURT: Is count thirty-two.

8 MRS. ALLOTEY: Right.

9 MR. ALLOTEY: Yes, and I presume this  
10 is the end of the charges against us.

11 THE COURT: That's right. Then the  
12 Court will then, at that time, on the Govern-  
13 ment's motion, dismiss all the other counts.  
14 They will be done with.

15 MR. ALLOTEY: Yes, your Honor.

16 THE COURT: Have any predictions or  
17 promises been made to you about what sentence  
18 will be imposed?

19 MRS. ALLOTEY: No.

20 MR. ALLOTEY: No, your Honor.

21 THE COURT: I do understand and I  
22 do know that you have already been incarcerated  
23 here since last August and I believe it to be  
24 the fact that during the rather protracted extra-  
25 dition proceeding, you were in custody, essentially

1  
2 on this indictment, in --

3 MRS. ALLOTEY: Ghana.

4 THE COURT: Ghana.

5 MRS. ALLOTEY: Right.

6 THE COURT: Those are things which will  
7 inevitably be taken into account.

8 I believe Mr. Ryan has made it clear  
9 that he would disclose that to me and I am  
10 sure Mr. Gerber would but apart from that, have  
11 any promises with respect to sentence or pre-  
12 dictions as to sentence been made which you are  
13 relying on in your pleas of guilty here?

14 MRS. ALLOTEY: They said that part would  
15 be up to you.

16 THE COURT: That's right and it will be  
17 based -- I will have the advantage of a pre-  
18 sentence report from the probation service.  
19 So, it is very important that you cooperate with  
20 the probation service so I get the best pre-  
21 sentence report possible in these circumstances.

22 Now, let me ask you, we discussed the  
23 indictment and the portions of it to which you  
24 have agreed to plead guilty.

25 Did you and each of you in fact participate

1  
2 in these transactions which did result in  
3 lulling the Camera into not pursuing its  
4 remedies against you and not demanding  
5 immediate payment?

6 MR. ALLOTEY: Yes.

7 MRS. ALLOTEY: Yes. We were co-  
8 directors.

9 THE COURT: You realize that that meant  
10 that they would not move against you and they  
11 were just being pushed away by something which  
12 was not quite true; is that right?

13 MR. ALLOTEY: That's right.

14 MRS. ALLOTEY: Correct.

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18 (continued on next page)  
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1  
2 THE COURT: The pleas of guilty to  
3 count thirty-two will be entered.

4 MR. RYAN: Now, your Honor, there  
5 were a couple of things that I told the  
6 Alloteys that I think should be on the  
7 record.

8 Number one, I told them that the  
9 Government would make no recommendations as  
10 to sentence, that that was a matter entirely  
11 within the discretion of the Court --

12 MRS. ALLOTEY: Yes.

13 MR. ALLOTEY: Yes, that's right.

14 MR. RYAN: (continuing) -- That we  
15 would make every effort that information given  
16 to the probation department was accurate infor-  
17 mation and not hearsay, innuendo and things of  
18 that nature and of course, they would have an  
19 opportunity, under court procedures, to take  
20 a look at the probation report prepared for  
21 your Honor before your Honor enters sentence  
22 and they would be given the opportunity to  
23 interpose any objections to any allegations  
24 contained therein.

25 The last point I want to make is that

1  
2 I will offer for the Court, as I have done  
3 with the defendants, to present to them the  
4 documentary evidence concerning the charge.

5 We have gone over it in detail but  
6 it was not presented again and I'd be happy  
7 to do it again.

8 MR. ALLOTEY: I don't think that is  
9 necessary.

10 MRS. ALLOTEY: You mean, to give us  
11 a copy?

12 MR. RYAN: Yes. I will give you  
13 all the documents and things of that sort.

14 MRS. ALLOTEY: That's all right.

15 MR. ALLOTEY: Yes, that's fine.

16 MR. RYAN: I'd like to know if  
17 other questions should be asked? I know  
18 of none.

19 THE COURT: I think the indictment  
20 itself was a rather full one and in the course  
21 of previous sessions I have and with Mr. Taback's,  
22 my law clerk's help, I got a considerable acquaint-  
23 tance with the factual basis of the indictment  
24 and I must say, Mr. and Mrs. Allotey, that  
25 I'm quite satisfied that there is a very solid

1  
2 factual foundation for your pleas of guilty  
3 and what a jury would think, I don't know,  
4 but I fear that they would have come to the  
5 same conclusions, inevitably.

6 That's about it.

7 MR. RYAN: We are also confident that  
8 the jury would reach a similar conclusion.

9 THE COURT: I take it that is why Mr.  
10 and Mrs. -- well, not quite -- but that for  
11 that and a lot of other reasons, I think it  
12 is better --

13 MR. GERBER: If I may ask the indulgence  
14 of the Court, in view of the pecuniary positions  
15 of the defendants --

16 THE COURT: Are you on the panel?

17 MR. GERBER: I have been assigned to  
18 federal court proceedings.

19 THE COURT: Are you on our panel here?

20 MR. GERBER: I am not on the Eastern  
21 or Southern District panels, although I have  
22 been assigned in both to act from time to time.

23 The defendants are without pecuniary  
24 means to pay for these minutes no more than  
25 they have for other meetings and I wonder if

1  
2 they could have a copy of the record of these  
3 minutes today?

4 MR. RYAN: Well, some of the proceedings  
5 were transcribed. I will show them to you. I  
6 am ordering this transcript.

7 MR. GERBER: That would be sufficient  
8 because my relationship with Mr. Ryan has been,  
9 as I repeatedly stated before, on a friendly  
10 and a cooperative basis. We have both had  
11 our jobs to do, of course --

12 THE COURT: As friendly as could be  
13 expected while representing your respective  
14 clients.

15 MR. GERBER: Yes.

16 I can borrow Mr. Ryan's minutes or have  
17 him make a copy for me and we will have a copy  
18 thereof. Mr. Ryan has been most cooperative.

19 THE COURT: I think the Government tends  
20 to be particularly generous, particularly where  
21 they feel strong.

22 MR. GERGER: Now then, if your Honor  
23 please, I presume the next order of business  
24 would be to set the sentencing date.

25 THE COURT: That's for when the pre-sentence

1  
2 report is ready.

3 MR. RYAN: I am going to make efforts  
4 to speed up the date of sentencing. I told  
5 the defendants I would do this. We have  
6 all the information the probation department  
7 needs and I am going to try to sit down with  
8 the probation department and expedite the  
9 report so this can be accomplished within  
10 the next month.

11 THE COURT: If that can be done,  
12 excellent.

13 MR. GERBER: Number two, it is obvious  
14 that the male defendant, Mr. Allotey, is in  
15 some physical distress.

16 He has apprised me of the fact infor-  
17 mally -- and he is at West Street Detention  
18 -- that when a plea of guilty is entered and  
19 even though he is then awaiting sentence, that  
20 they move him from his present place in that  
21 house of detention and he asks if I would  
22 apprise the Court of the fact that he is in  
23 the hospital ward there and seems satisfied  
24 that he is properly being taken care of and  
25 if the Court would instruct the West Street

1  
2 House of Detention to let him continue until  
3 the time of sentencing and then disposition  
4 follows --

5 MR. RYAN: I will undertake that  
6 assignment.

7 THE COURT: If any problem arises we  
8 can take it up again.

9 MR. GERBER: The last one has been  
10 peripatetic with me. The situation has some-  
11 what changed from previous times I made the  
12 application.

13 Would the Court reconsider its previous  
14 determination on the question or questions --  
15 since there are two of them involved -- of  
16 the bail situation?

17 I don't know that it can be materially  
18 different. However, if we have something  
19 materially different as an objective, perhaps  
20 I do have, as I have indicated to the Court  
21 some friends of these folks, church group  
22 friends, who might be willing to help in  
23 accordance with what pronouncement the Court  
24 now makes.

25 MR. RYAN: As I told the defendants, on

1  
2 the question of bail, we have to maintain our  
3 present position of objecting to bail and that  
4 is why we have to speed up the sentence date  
5 and the sentence to be imposed. But, we must  
6 take the same position we always have.  
7

8 THE COURT: I think the bail situation  
9 is somewhat changed. However, I don't think  
10 it has changed enough to warrant the change  
11 in the ruling.

12 If it turns out that that sentence looks  
13 as though it is going to be delayed for any  
14 reason, we will have to re-examine the bail  
15 question seriously. But, if we can maintain  
16 the schedule that is within that limit, I think  
17 I could not see my way clear to changing the  
18 bail.

19 MR. RYAN: Let me give your Honor a  
20 date that I would try to accomplish the sentencing.  
21 March 21st.

22 MR. GERBER: March 21.

23 MR. RYAN: That is a Friday.

24 MR. GERBER: March 21 appears to be  
25 okay for defense counsel.

THE COURT: Well, if you get probation

1  
2 to see it that way.

3 Is probation here?

4 PROBATION OFFICER: I am here but  
5 I don't know that we can promise that date

6 MR. RYAN: Well, I will leave that  
7 to my assignment.

8 THE COURT: He must know Mr. Harran.

9 MR. RYAN: If we don't have any sentencing  
10 by Mary 21, then bail considerations may be  
11 reconsidered. March 21 is only a couple of  
12 weeks away.

13 MR. GERBER: May we have in mind, with  
14 Mr. Ryan, that in the event that things can  
15 be prepared, to anticipate that date, that  
16 upon notification to myself, I will try to  
17 make myself available to the Court for that  
18 disposition.

19 If I may have the Court's indulgence  
20 to find out if I am overlooking any request  
21 to be addressed to your Honor.

22 (Defendants and defense counsel  
23 conferring not within the hearing of the  
24 reporter)

25 MR. GERBER: I think I can arrange it

1  
2 with Mr. Ryan but I will give the Court the  
3 request.

4 While Mr. Allotey has been in the  
5 federal detention house on West Street he has  
6 been working up some invention which may have  
7 some commerical value and he just asked me  
8 to ask the Court if his daughter, who is  
9 handling it, could be permitted to come to  
10 the West Street Detention for consultation  
11 with him.

12 I think if I ask Mr. Ryan to do that  
13 on behalf of the defendant, I don't believe  
14 I'd have any trouble in having Mr. Ryan help  
15 us.

16 MR. RYAN: I will make an effort in  
17 that regard.

18 MR. GERBER: So, I don't make a formal  
19 request on the Court because I don't think  
20 Mr. Ryan needs a formal direction on that.

21 THE COURT: I don't know what the  
22 rules of visiting are. Aren't they for family?  
23

24 MR. RYAN: Oh, yes.

25 MR. GERBER: It could be done by Mr.  
Ryan more readily then through the Court,

1  
2 begging your pardon.

3 THE COURT: Yes, I think they are  
4 more ready to accept direction from the  
5 United States Attorney than from the Court.

6 MR. GERBER: Again, thank you,  
7 your Honor.  
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1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 -----X  
4 UNITED STATES OF AMERICA,  
5 Plaintiff,

6 - against -

73 CR 34

7 ENID ALLOTEY and ADDOQUAYE STEPHEN  
8 ALLOTEY,

9 Defendants.  
10 -----X

11 United States Courthouse  
12 Brooklyn, New York

13 March 21, 1975  
14 10:00 a.m.

15 B e f o r e :

16 HON. JOHN F. DOOLING, JR., U. S. D. J.  
17  
18  
19  
20  
21

22 ILENE GINSBERG  
23 OFFICIAL COURT REPORTER  
24  
25

1  
2 APPEARANCES :

3  
4 DAVID G. TRAGER, U.S. ATTY.

5 BY: JOSEPH RYAN, AUSA

6  
7 GUSTAVE GERBER, ESQ.  
8 Attorney for defendants  
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2 THE CLERK: Criminal cause for sentencing  
3 Enid Allotey and Addoquaye Stephen Allotey.

4 MR. RYAN: Good morning, your Honor.

5 THE COURT: Good morning, Mr. Ryan.

6 MR. GERBER: Good morning, your Honor.

7 THE COURT: Good morning, Mr. Gerber.

8 Are we ready?

9 MR. GERBER: The defendants are ready  
10 for sentence if your Honor please.

11 THE COURT: Now Mr. and Mrs. Allotey,  
12 do you wish to have Mr. Gerber represent you  
13 on the sentencing proceeding here this morning?

14 MR. ALLOTEY: Yes sir.

15 MRS. ALLOTEY: Yes sir.

16 THE COURT: Is there any reason sentence  
17 should not be imposed on each defendant under  
18 count 32 of this indictment, Mr. Gerber?

19 MR. GERBER: There appears to be no  
20 legal cause.

21 THE COURT: Is there anything you wish  
22 to say on the defendants' behalf before sentence  
23 is imposed?

24 MR. GERBER: Yes.

25 I don't know if you wish to hear the

1  
2 defendants on their own behalf first --

3 THE COURT: They will each have a  
4 turn to speak for themselves separately.

5 MR. GERBER: Well, if your Honor  
6 please, these defendants, after a long  
7 hearing in Ghana were they were first appre-  
8 hended at the request of the United States  
9 officials, were returned and put into the  
10 custody of this court. I think they were  
11 returned on August the first and appeared  
12 in court on August 2nd, 1974 and both of  
13 them have been in continuous custody since  
14 that time in view of the bail assessed upon  
15 them, a quarter of a million dollars a piece  
16 which was far beyond anything they could hope  
17 to post.

18 THE COURT: Well, I think in fairness,  
19 it must be said that the Government has long  
20 been ready to move the case to trial and that  
21 it was the request of defendants for additional  
22 preparation time that accounts for a considerable  
23 part of the protraction that ensued.

24 MR. GERBER: Yes.

25 I was about to say that after first making

1  
2 sure that I would not be remiss I would like  
3 to make at least two personal comments to the  
4 Court on my own behalf.

5 When brought into the case shortly  
6 after August 2nd, 1974, I knew absolutely  
7 nothing about it as the Court well understands  
8 and at that time there was a welter of papers  
9 which had been brought to me from Africa which  
10 I subsequently was also, likewise, able to  
11 obtain recourse to and in some instances copies  
12 from.

13 First, so I don't get too involved in  
14 whatever I may be addressing to the Court and  
15 not to be remiss in paying my respects and my  
16 gratification, I would like to say that I  
17 thank this Court on behalf of the defendants  
18 and myself for the indulgence which the Court  
19 has shown in these many months for the oppor-  
20 tunity that may be afforded to me to become  
21 familiar with the facts.

22 As I heretofore stated I had known  
23 nothing and may the record show that on behalf  
24 of the defendants and myself, I express that  
25 thanks.

1  
2 To have recourse to the vernacular,  
3 if I may be permitted, I make this statement  
4 not in the nature of buttering-up anybody  
5 but merely in a frank thanks for the circum-  
6 stances from the period of time I am discussing.

7 I would likewise be remiss and perhaps  
8 in these respects I wish to express my thanks  
9 to your Honor's indication -- I was going to  
10 say charge but perhaps that sounds too strong --  
11 to Mr. Joseph Ryan for when the Court adjured  
12 Mr. Joseph Ryan to make available to me such  
13 papers and documents that might properly come  
14 to my attention as I was looking into and  
15 becoming familiar with the facts of the case,  
16 I can only enter upon this record my sincere  
17 thanks and appreciation to Mr. Ryan and his  
18 assistants for making those records available  
19 to me and likewise, I say I don't have to  
20 butter-up Mr. Ryan because he was doing his  
21 job as he understood it and I acknowledge the  
22 fact that it was well understood by him and  
23 well done by him. Thanks again, Mr. Ryan.

24 Now, coming down to the nitty gritty  
25 of the case itself now before the Court, I know

1  
2 that you have what would appear to be full  
3 and complete probation reports from the pro-  
4 bationary department officers and which were  
5 submitted to you.

6 I didn't see them before this morning.

7 THE COURT: You might have seen them,  
8 had you inquired, as soon as we had them.

9 MR. GERBER: I was remiss and I thought  
10 I would be called or told about them. I spoke  
11 with Mr. Ryan once or twice and I think at the  
12 time he said he had not seen any such reports.

13 However, I was able to read and peruse  
14 the report on the female defendant, Enid Allotey  
15 and I did that completely as to the papers before  
16 your Honor.

17 THE COURT: Both reports were available.  
18 Do you need time to look at Mr. Allotey's report?

19 MR. GERBER: No.

20 As I started to read Mr. Allotey's, having  
21 completed the report on Mrs. Allotey, your secre-  
22 tary advised me that the Court had disposed of  
23 whatever matter was previously before it --

24 THE COURT: If you need time to go over  
25 Mr. Allotey's report please do so. Do you have

1  
2 it there?

3 MR. GERBER: No, but may I say this  
4 in that connection --

5 THE COURT: Would you give it to  
6 counsel so he may go over it?

7 (Document handed to counsel by  
8 probation officer)

9 MR. GERBER: Having read the report  
10 on Mrs. Enid Allotey, the female defendant,  
11 it appears to me that I would be familiar with  
12 what facts would be contained therein --

13 THE COURT: Well, I think you had best  
14 go over it with Mr. Allotey.

15 You have seen Mr. Allotey's separate  
16 and later letter to me?

17 MR. GERBER: Yes. I was able to see  
18 that because your clerk gave it to me --

19 THE LAW CLERK: There is a later  
20 letter attached to the report.

21 THE COURT: Take the time you need  
22 to review it with your client.

23 MR. RYAN: I have seen no letters.  
24 Perhaps I should or perhaps I should not.

25 THE COURT: I think you should see

A 50

1  
2 Mr. Allotey's letter, particularly the passages  
3 that I have marked because they create the  
4 same problem we had on the last plea here this  
5 morning, I'm afraid, Mr. Ryan.

6 (Recess taken)  
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12 (continued on next page)  
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2 (after recess)

3 MR. RYAN: Your Honor, I have read  
4 the letter of Mr. Allotey dated March 18  
5 and I note the portions marked by your Honor  
6 in red pencil. But I don't believe Mr.  
7 Gerber has had an opportunity to go over that  
8 material. Have you?

9 MR. GERBER: No. I have not but I  
10 am about on the threshold of it. I have about  
11 three pages of the probation report and then  
12 this letter Mr. Ryan was good enough --

13 THE COURT: You see, the problem is  
14 that this is a plea of guilty to the 32nd  
15 count and it is on that basis only that I can  
16 sentence and I cannot sentence in defiance  
17 of the defendant's assertions of innocence.  
18 Now, that sums it up in a nut shell.

19 Now, what I had understood from our  
20 interrogation here when last we were together,  
21 the defendants were in agreement that whatever  
22 the pressures and motivations that might have  
23 brought them to that situation at the time of  
24 the communications referred to in count 32 --  
25 and that defines a time rather than a specific

1 communication of which they were the authors  
2 -- that at that time they agreed that they  
3 were substantially, as charged in paragraph  
4 four of the indictment, calculatedly and  
5 intentionally lulling Camera into withholding  
6 its fire, not seeking to collect the money  
7 already in their possession so that they  
8 could make an effort through this Bahamian  
9 other venture to recoup their fortunes and  
10 pay Camera and cables were exchanged to that  
11 end, thus deceiving Camera of its remedies  
12 and preventing Camera from coming in before  
13 the dissipation was complete, recovering  
14 from the wreck what at least remained on  
15 the money realized from its cocoa. That's  
16 what I understood each defendant was pleading  
17 to -- that yes, that much was true. All the  
18 rest was explanation; that in the beginning,  
19 in the very beginning, there was never inten-  
20 tions except to conduct a valid enterprise in  
21 the interest of Camera and to get a better  
22 realization of the great end of the great  
23 cocoa crops and better everyone's situation  
24 but that it got hopelessly out of hand until  
25

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2  
3 they were driven to this expedient which  
4 they invoked and wrongly invoked with  
5 conscious wrong doing. Even though the  
6 motivation for it may have been noble they  
7 knew it was wrong to do when they did it  
8 and they were in effect making Camera an  
9 involuntary party to their foolish game  
10 with Camera's money.

11 MR. GERBER: I recall the colloquy  
12 between --

13 THE COURT: Now, unless we can be  
14 confident that it is in the recognition that  
15 that criminal misconduct is properly charged  
16 to them we cannot move forward.

17 MR. GERBER: If your Honor please, I  
18 was about to say I recall distinctly the  
19 explicit questioning by your Honor in order  
20 to determine for your own mind the nature  
21 of the pleas and the responses by the defendant.

22 Mr. Ryan has given me this marked copy  
23 of the letter which you apparently received  
24 and gave to Mr. Ryan.

25 THE COURT: Yes. Mr. Allotey sent  
me that excellently written letter himself

1  
2 and I think he advised me in it that he  
3 had not consulted you about the wisdom of  
4 sending it.

5 MR. GERBER: As I have noted in some  
6 other preliminary things, difficulties, perhaps  
7 of language and if the Court will indulge me  
8 about five minutes to finish the other papers  
9 so that is done, I will specifically address  
10 myself --  
11

12 THE COURT: Well, we don't want to  
13 rush into this though because if this requires  
14 carefully re-thinking through, then we have  
15 to carefully re-think it and we will take the  
16 time to do it.

17 MR. GERBER: That is what I am indicating  
18 and if I am in a position to advise you as to  
19 the result of my interrogation as to the meaning  
20 of the language employed --

21 THE COURT: I am afraid I cannot accept  
22 that. That language says what it says. It is  
23 too clear --

24 MR. GERBER: What does the Court want  
25 at this moment?

THE COURT: I want to know whether that

1  
2 language is true or false and if that be  
3 true, if that be what they claim, then we  
4 cannot move ahead.

5 Now similarly, the communication from  
6 Mrs. Allotey has something which is not quite  
7 that --

8 MR. GERBER: I think somewhat different --

9 THE COURT: But there again, she reserves  
10 out the question of having had criminal intent.  
11 But, this is a criminal intent and I think you  
12 must be careful to differentiate between moti-  
13 vation and intention.

14 Now, what motivated the formation of  
15 this intention may be quite innocent but you  
16 cannot march through evil to good. You cannot  
17 pursue even good ends by evil means.

18 They might have been motivated by the  
19 wish to recoup fortunes and thus make Camera  
20 whole and in that sense had an excellent and  
21 innocent motivation. But what we are talking  
22 about here is, was there a conscious resort  
23 to known wrongdoing in order to achieve that,  
24 perhaps, good end and it is upon that that  
25 the pleas must rest because if the assertions

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continue to be made that there was never at any time any criminal intention or to put the situation of Camera in jeopardy, then we cannot accept the pleas.

I suggest that we go over until after the lunch hour, maybe 2:30 or a quarter of three, somewhere in there and let's really think this through and make sure that we are moving ahead on the right track.

MR. GERBER: It is now mid day.

May I suggest that you extend me the further indulgence of fifteen minutes at which time I can report to you our status, where we stand.

I have read both sets of papers and there is a variance although I haven't still read this marked-off paper.

THE COURT: I don't want anyone fooling himself here. This is real. I am not just talking about an appeal of words that is supposed to paper this situation here. That is not what we are talking about.

I am talking about pleas of guilty, not pleas of convenience, not pleas that brush things

1  
2 under the rug but a plea of guilty to count  
3 32 interpreted with specific reference --  
4 for that is what this count deals with --  
5 to the phase of the case set forth in para-  
6 graph four.

7  
8 MR. RYAN: Three o'clock is all right  
9 with us, your Honor.

10 THE COURT: I think we had better not  
11 try to do that in fifteen or twenty minutes  
12 because I think you have to review this matter  
13 with your clients carefully because if I may  
14 say so, the time for self-deceit is long  
15 passed, Mr. Allotey and Mrs. Allotey.

16 You must both be honest with yourselves,  
17 with me and with Mr. Ryan.

18 MR. GERBER: If your Honor please, may  
19 I still appear to be --

20 THE COURT: Yes, you are being --

21 MR. GERBER: May I still appear to be  
22 pressing upon the Court?

23 Will the Court indulge me fifteen  
24 minutes because I have in mind all of the  
25 prior discussions we have had including with  
you, including with Mr. Ryan and particularly

1  
2 myself, which may explain this paragraph  
3 so that the Court will be satisfied of its  
4 relationship to the time of the plea.

5 THE COURT: I think you owe this  
6 time to your clients.

7 MR. GERBER: Well, I will give it to  
8 them. I have given them so much already.

9 THE COURT: We will meet at three  
10 o'clock.

11 MR. GERBER: May I have the convenience  
12 of my clients with me because if they are  
13 taken for lunch --

14 THE COURT: Certainly, between now  
15 and one o'clock. I don't know the arrangements -  
16 downstairs.

17 DEPUTY MARSHAL: Your Honor, they eat  
18 downstairs and they can eat in the room and  
19 have their counsel with them.

20 MR. GERBER: May I carry the papers  
21 with me and then return them to the Court?  
22

23 THE COURT: Surely.

24 (Recess taken)

25  
(continued on next page)

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(After recess)

MR. RYAN: Your Honor, Mr. Gerber,  
I do not believe has the letter attached  
to Addoguaye Allotey's probation report.  
It is a letter of explanation attached to  
the probation report.

THE COURT: I'm sorry. I didn't  
quite get you.

MR. RYAN: I believe Mr. Gerber has  
not seen Addoguaye Allotey's statement that  
is attached to the probation report.

THE COURT: Yes, that's right.

Wasn't it attached?

LAW CLERK: Yes, Judge. It was  
attached. I saw it and he got what I was  
looking at but if he has not read it yet --

(Document handed to counsel)

(pause)

MR. GERBER: Thank you, your Honor.  
My attention has been attracted to a  
paragraph which may or may not have been dealt  
with in the overall situation.

(Document handed to Court)

MR. GERBER: Well, may I say, good

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1  
2 afternoon, your Honor and may I sort of  
3 pick up where we left off before lunch?

4 THE COURT: Yes, indeed.

5 MR. GERBER: At that time there was  
6 called to my attention a paragraph in a  
7 letter by the male defendant, Adoquaya  
8 Allotey which disturbed your Honor and your  
9 Honor wanted me to get straightened out and  
10 you afforded us the time from about twelve  
11 o'clock sharp until now which is a few  
12 minutes after three to discuss the matter  
13 and during the luncheon period we all had  
14 together downstairs --

15 THE COURT: Mr. Ryan indicates that  
16 he was not there.

17 MR. GERBER: Yes.

18 THE COURT: You mean, you and the  
19 defendants.

20 MR. GERBER: Yes.

21 I discussed with them the import of  
22 what the paragraph said and how it affected  
23 your thinking in the matter and what you  
24 wanted straightened out or clarified, at any  
25 rate.

1  
2 The nature and substance of that  
3 paragraph was --

4 THE COURT: I thought there were  
5 two paragraphs. I am not sure.

6 MR. GERBER: Well, it's the paragraphs  
7 marked-off on page 3 in the letter in question  
8 and your Honor is correct. It is substantially  
9 two paragraphs and it may have been interpreted  
10 as a disclaimer of a culpable liability which  
11 would underlie the plea which has been offered  
12 to your Honor and on which you had examined  
13 the defendants on February 27 -- no, it  
14 couldn't be the 27th -- February 21, of this  
15 year.

16 THE COURT: I had drawn your attention  
17 also to the statement recited as having been  
18 made by the defendant Addoquaye Allotey at  
19 page 9 of the pre-sentence report.

20 MR. GERBER: I am frank to admit that  
21 I was negligent and didn't take notice of  
22 that pinpointing of the time before lunch.

23 However, since that is the defendant's  
24 statement at the top of page 9 of the proba-  
25 tion report I do believe that its essence and

1  
2 its substance was contained in the paragraph  
3 on page 3 of the subsequent letter which had  
4 been addressed to you by Mr. Allotey.

5 As a result of the discussion we had  
6 -- and it was in depth -- as it related to  
7 page, or the paragraphs on page 3, but I  
8 don't think they are incorporated in what is  
9 now called to my attention, page 9 of the  
10 probation report.

11 The defendant Addoquaye Allotey caused  
12 to be dictated to his wife, the co-defendant,  
13 Enid Allotey, who in her hand script prepared  
14 two pages.

15 I have shown it to the United States  
16 Attorney. I don't know what comment he has  
17 with regard thereto but I now offer it for  
18 the inspection of the Court to see whether  
19 or not that explanation would clarify and  
20 indicate that the apprehension of the Court  
21 that it might be a disclaimer of the plea of  
22 guilty is not -- what shall I say -- not  
23 altogether substantiated but on the contrary,  
24 would appear to be negative and more in line  
25 with the nature of the plea offered, examined

1  
2 upon and accepted by your Honor.

3 I believe that handwriting is clear  
4 enough. It is better than my own.

5 (Document handed to Court)

6 (pause)

7 (Document handed to counsel)

8 THE COURT: Let that be in some  
9 form, made a part of the record.

10 MR. GERBER: Yes. I would offer it  
11 as a Court record so it is part of the Court  
12 record.

13 THE COURT: Mark it as Court exhibit  
14 1 and it will be incorporated with the other  
15 material attached to the pre-sentence report.

16 THE CLERK: Now Court exhibit 1.

17 (So marked)

18 (Document handed to Court)

19 THE COURT: Yes sir.

20 MR. GERBER: If now you are prepared  
21 to permit me to continue --

22 THE COURT: I don't quite understand.

23 At this point does the defendant  
24 Addoquaye Allotey admit that at the time  
25 referred to in count 32 --

1  
2 MR. RYAN: Which is February 23,  
3 1971 --

4 THE COURT: (continuing) -- in the  
5 language of paragraph 4 of the indictment  
6 he was sending lulling cables, letters and  
7 telegrams to banking institutions in the  
8 United States that acted as agents for  
9 Camera causing them to expect payment in  
10 full at a future date when he knew that  
11 he was and his wifewere converting to their  
12 own use the proceeds realized from the sale  
13 of the two shipments of cocoa leaves to  
14 General Cocoa?

15 MR. GERBER: I would prefer if the  
16 defendant Addoguaye Allotey directly answers  
17 that question to your Honor.

18 Do you understand the question?

19 DEFENDANT ADDOGUAYE ALLOTEY: Yes.

20 MR. GERBER: Please inform the Court  
21 what you were pleading to.

22 DEFENDANT ADDOGUAYE ALLOTEY: Your  
23 Honor, I would like for you to read it  
24 again slowly for me to hear it.

25 MR. RYAN: Your Honor, we are dealing

1  
2 with the first shipment; proceeds from the  
3 first shipment.  
4

5 THE COURT: Oh, yes, because this  
6 was February 21st.

7 MR. RYAN: Correct.

8 THE COURT: That at the time referred  
9 to in count 32, in or about February 21st,  
10 you, together with Mrs. Allotey were sending  
11 lulling cables, letters and telegrams to  
12 various banking institutions in the United  
13 States that acted as agents for Camera, causing  
14 them to expect payment in full at a future  
15 date when in fact, you and Mrs. Allotey were  
16 converting to your own use the proceeds realized  
17 from the sale of the first shipment of cocoa  
18 beans to General Cocoa Company.

19 DEFENDANT ADDOQUAYE ALLOTEY: Your  
20 Honor, unfortunately, I have not had the  
21 opportunity to actually see a copy of the  
22 plea we made.

23 (Document handed to defendant Addoquaye  
24 Allotey)

25 THE COURT: Paragraph fourth. Is  
that what you meant?

1  
2 DEFENDANT ADDOQUAYE ALLOTEY: Yes.

3 It is now that I am aware -- I  
4 have now become aware -- I thought we were  
5 pleading to this cable which was sent after  
6 a telephone call came from the collecting  
7 officer of the Irving Trust Bank of New York.  
8 I thought that is what we pleaded guilty to.

9 MR. RYAN: That's the factual basis  
10 upon which this count is drawn.

11 THE COURT: As I drew your attention  
12 to the fact, count 32 appears to deal with  
13 a communication addressed to Stevens and  
14 Company.

15 MR. RYAN: Yes, but in the course of  
16 what is being carried out as a scheme, in  
17 paragraph four.

18 THE COURT: Yes.

19 In other words, it was responsive  
20 to other communications and I believe that  
21 at the time of the pleading a copy of it  
22 was here in court.

23 MR. RYAN: It was.

24 MR. GERBER: I think it would help  
25 us if we identify the individual as a Mr.

1  
2 Higgenbottom of the bank who received that  
3 statement.

4 MR. RYAN: Yes.

5 Mr. Higgenbottom's statement, provided  
6 to the defendants before pleading guilty,  
7 showed that he communicated with Mrs. Allotey  
8 on January 8; that the payment was due for  
9 the first shipment and that Mrs. Allotey  
10 informed Mr. Higgenbottom acting on behalf  
11 of Camera because he was an officer of Irving  
12 Trust Company, Mrs. Allotey informed Mr.  
13 Higgenbottom that after the cocoa was weighed  
14 and passed S.D.A. inspection payment would be  
15 made.  
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(continued on next page)

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2 MR. REAN: (continuing) On February  
3 2nd, Mr. Higgenbottom spoke to Mrs. Allotey  
4 and she informed that weighing was not  
5 completed and that only five thousand out  
6 of thirty-two thousand seven hundred eighty-  
7 seven bags was completed.

8 On February 3th, Mr. Higgenbottom was  
9 informed by Mrs. Allotey that the weighing  
10 was not completed but that payment would be  
11 made in two weeks. On February 8th, the  
12 documentary evidence obtained from the  
13 Bahamas showed that six<sup>hundred</sup> thousand dollars was  
14 deposited in the Bank of Montreal account  
15 and a ten thousand dollar cash withdrawal  
16 was made on the same day and they told Mr.  
17 Higgenbottom payment would have to await  
18 weighing but it would be made in two weeks.

19 On February 24th, the defendant  
20 informed Mr. Higgenbottom that payment would  
21 be made on or about March 5th and according  
22 to the documentary evidence of the bank in  
23 Montreal they had drawn two hundred thirty-  
24 seven thousand six hundred seventy-three  
25 dollars, almost all of which was made payable

1  
2 to the Monte Carlo Casino in Freeport in  
3 the Bahamas.

4 On March 5th, Mr. Allotey informed  
5 Mr. Higgenbottom that overall formalities  
6 were taking more time than anticipated but  
7 payment could be expected within ten days  
8 and ten days later, on March 15th, Mr.  
9 Higgenbottom called about payment and Mrs.  
10 Allotey informed him that other arrangements  
11 were being made for payment; that the letter  
12 of credit was not being utilized and at  
13 that time there had been drawn on the Bank  
14 of Montreal account of the defendants, another  
15 two hundred forty-one thousand dollars so  
16 that by March 15 half a million dollars had  
17 been drawn on the Bank of Montreal account  
18 when Mr. Higgenbottom was pursuing the collec-  
19 tions on behalf of Camera and this continued  
20 until April 30th when on April 30th Mrs.  
21 Allotey told Mr. Higgenbottom payment could  
22 be expected on May 3.

23 At that point there was another one  
24 hundred forty thousand dollars in proceeds  
25 from the first sale deposited in the bank

1  
2 account and there had been drawn by the  
3 defendants on their account another two  
4 hundred and thirteen thousand dollars for  
5 a total of six hundred and ninety-one  
6 thousand dollars drawn against the seven  
7 hundred and forty-one thousand dollars in  
8 proceeds.

9 That is between February 8th and  
10 April 30th according to the documentary  
11 evidence.

12 Out of the six hundred and ninety-  
13 one thousand dollars we have documentary  
14 evidence that five hundred and fifty-seven thousand  
15 dollars was made payable to the cashier of  
16 the Monte Carlo Casino in Freeport in the  
17 Bahamas, in exchange for chips and cash.

18 On February 23, when this scheme was going  
19 on, in the communications of Mr. Higgenbottom  
20 that caused the cablegrams to go from Camera's  
21 Bank of Spain to Irving Trust Company, one  
22 of the cables urged Irving Trust Company to  
23 get payment for that first shipment and that  
24 is the payment addressed to in count 32 and  
25 that is the basis we started out on and if I

1  
2 knew we were going to have to go through  
3 all this hemming and hawing and resistance,  
4 we would have gone ahead.

5 I want it understood that was the  
6 factual basis for which the plea was  
7 under and I want no misunderstanding with  
8 regard to the Government's case as to  
9 count 32.

10 MR. GERBER: I believe that the  
11 statement by Mr. Ryan is in substantial  
12 agreement with or is a substantially correct  
13 recital of the documentary evidence intro-  
14 duced and is a substantially correct recita-  
15 tion of the basis or bases of your respective  
16 questions as to the intentions regarding that  
17 plea. I have no contest on the recital that  
18 Mr. Ryan has just made.

19 THE COURT: I have just asked Mr.  
20 and Mrs. Allotey if that is what they are  
21 pleading guilty to.

22 DEFENDANT ENID ALLOTEY: Yes, that  
23 is what we were pleading guilty to.

24 DEFENDANT ADDOQUAYE ALLOTEY: Yes.

25 THE COURT: There is no equivocation?

1  
2 DEFENDANT ADDOQUATE ALLOTEY: There  
3 has only been a problem of language. I  
4 indicated this on our way from Ghana to  
5 Inspector --

6 MR. RYAN: McDowell --

7 DEFENDANT ADDOQUAYE ALLOTEY: Yes --  
8 so I want you to bear with me.

9 I have to translate from my native  
10 language into English to understand what  
11 is going on.

12 THE COURT: All right, sir.

13 I think we were discussing the  
14 question of whether there was anything that  
15 you wished to say with respect to sentence  
16 before sentence is imposed.

17 MR. GERBER: If your Honor please --

18 THE COURT: May I have the second  
19 letter.

20 MR. GERBER: You want the special  
21 letter? I think this was an addendum to  
22 that letter, Mr. Clerk.

23 (Document handed to Court)

24 MR. GERBER: This, if your Honor  
25 please, is a copy of the probation report

1  
2 which I received from the bench.

3 (Document handed to Court)

4 MR. GERBER: May the record show that  
5 I have returned all the papers entrusted  
6 to me.

7 THE COURT: I don't think this  
8 belongs in the file (indicating document).  
9 I think that is a quite different matter.

10 (Document handed to counsel)

11 MR. GERBER: Thank you, sir.

12 Now, if I am to address myself to the  
13 main order of business, to which we were called  
14 together today and which has been resolved  
15 on the peripheral edges to the satisfaction  
16 of the Court, I repeat what I have responded  
17 to when the Court made the inquiry before  
18 and that is, that the defendants are prepared  
19 and ready for sentence and that I know of no  
20 legal cause why sentence should not be  
21 pronounced upon them.

22 As to the content of such a sentence  
23 may I be permitted at this time to make some  
24 very, very preliminary remarks because after  
25 all of the debating that we have done, the

1  
2 discussing and the analyzing, I think it  
3 would be carrying coal to New Castle to  
4 attempt to -- what shall I say -- attempt  
5 to enliven in the mind of your Honor, who  
6 has been very patient and attentive of the  
7 developments since the first time I came  
8 to this court on this matter, which was  
9 August 1974 -- it would be carrying coal  
10 to New Castle.

11 In addition to those things I have  
12 just incorporated by reference, unless there  
13 is some particulars which the Court would  
14 prefer to have me remind it of and therefore  
15 to detail in greater explanation to the Court,  
16 I doubt it necessary but I'd be prepared to  
17 do it to the best of my ability at the request  
18 and instruction of the Court.

19 May I merely add this: That although  
20 the case has culminated on this plea of guilty  
21 on the special points raised by the plea to  
22 count number 32 and in its relationship to  
23 count number 4, the evidence would appear  
24 to indicate that in the beginning, ab initio,  
25 there had been taken by the defendants, the

1  
2 steps to warrant, to authorize and to even  
3 facilitate, by letters of credit, the in-  
4 debtedness --

5 THE COURT: I think it would be  
6 better if you addressed yourself to the  
7 matter of sentence.

8 MR. GERBER: Intention?

9 THE COURT: Sentence.

10 MR. GERBER: Yes.

11 Well, in my lame way, that is what  
12 I was coming up to.

13 There had been preparations made for  
14 payment by letters of credit which were  
15 aborted by the fact that the seller, Camera,  
16 of the Equitorial Government of Guinea  
17 refused to accept, on the ground that they  
18 wanted guaranteed payment and were not going  
19 to make themselves in any way responsible  
20 for fluctuations of market prices.

21 As a result of that, the contract  
22 which had been made by the defendants under  
23 the name and style of Steven and Company to  
24 the General Cocoa Corporation, a New York  
25 corporation, Steven and Company, being a

1  
2 partnership under the laws of the State  
3 of New York that it was agreed Community  
4 Bank and Trust Company would undertake  
5 the guarantee of the payments and somewhere  
6 along the line it has never been completely  
7 cleared up, that went by the wayside, the  
8 way of all flesh and the documents for the  
9 delivery and payments for the shipments  
10 constituting the first and subsequently the  
11 second shipment of cocoa received by the  
12 General Cocoa Company of New York, the money  
13 in payment, found its way into the hands of  
14 the Alloteys, Stevens and Company.  
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2 MR. GERBER: (continuing) There  
3 are some allegations -- and I don't know  
4 that the materiality of it at this time is  
5 of such importance to burden the Court with  
6 a repetition thereof -- after some interim  
7 understanding with the Government of Guinea  
8 and in view of the fact that Guinea did not  
9 get paid and Guinea made the demand for  
10 payment, the promises under the circumstances,  
11 already re-capped, as we read the plea by  
12 the defendants, for the payment to Higgenbottom  
13 of the Irving Trust Company, here in New York,  
14 turned out to be based upon an insubstantial  
15 expectation -- if I may use that word -- in  
16 view of the fact that the -- what will I say --  
17 the forthcoming of such money was not predicated  
18 on anything that was realistic to support it.

19 The defendants were operating under  
20 the belief, which belief, if it had ever  
21 existed in reality, was negated and destroyed  
22 by the non-payment on the first and second  
23 shipments concerning which we have been talking,  
24 that Stevens and Company, the business form  
25 of the defendants here, were to become the

1  
2 sole distributors and representatives of  
3 the Guinea Government as well as some other  
4 African nations in the sale and distribution  
5 of their commodities, products in their  
6 respective communities.

7 But, no payment was made and that  
8 is where the nub of the situation arises.

9 And, it was made after the demand for  
10 payment, as was recited in indictment number  
11 32 of the 33 count indictment and the one  
12 indictment count to which they plead resolved  
13 itself in the failure to perform.

14 The difficulty in some respect that  
15 has arisen and the spectre of which has haunted  
16 us during the preparatory and present dispositive  
17 action in this case seems to have arisen over  
18 the fact that the defendants were under the  
19 impression that an immediate payment would not  
20 be required, at least, not until the Irving  
21 Trust Company on behalf of the Bank of Spain  
22 or the Bank of Madrid began to demand it and  
23 received the promises which they received,  
24 that the primary purpose of the African countries  
25 was to establish an independent buying and selling

1  
2 service of the products of those respective  
3 countries. We are not going to argue or  
4 re-argue that, if your Honor please. It has  
5 given us sleepless nights and painful hours  
6 to come to the conclusion we arrived at upon  
7 which your Honor is to pass judgment, pass  
8 sentence.

9 As a result of the ultimate development,  
10 the defendants find themselves subject to  
11 such punishment as to your Honor may appear  
12 to be appropriate, bearing in mind the length,  
13 the breath, the thickness of the entire picture  
14 presented here in our discussions and in the  
15 writings, papers and pleadings that constitute  
16 this case.

17 The judgment that is to be made -- I'm  
18 not going to indicate any limits or outlines  
19 of your thinking in this matter -- far be it  
20 from me to presume to even attempt it -- but  
21 nevertheless, I think in disposing of the  
22 bodies of these two people, the Judge may be  
23 briefly reminded of the fact that Enid Allotey  
24 is an American born citizen, a mother of five  
25 infant children ranging from something like

1  
2 twenty years down to about ten or thereabouts,  
3 who, at the present time, are in the custody  
4 of the elder sister, Lydia Djata here in  
5 Manhattan; that they have, by a prior  
6 marriage of this female defendant, some  
7 uncles and at least one aunt who are residents  
8 of the United States; that all of these  
9 people in this family and the siblings connected  
10 therewith and related thereto appear to be  
11 people of probity in the communities in which  
12 they reside.

13 I think that there is no serious  
14 challenge to the statement that I might make  
15 to the Court and that the papers represent to  
16 me that she has -- when I say "she" -- Enid  
17 Allotey, has no criminal convictions that  
18 arise out of any situation and no arrests  
19 for that matter, of any concept in relation-  
20 ship to this matter.

21 There were one or two little bits of  
22 flurries that arose -- incipient flurries --  
23 that arose out of their travelling in Europe  
24 as they attempted to raise independently,  
25 sums of monies to meet their business debts,

1  
2 their business debts and obligations to  
3 Camera.

4 Those who have had personal contact  
5 on behalf of the Government, myself, as an  
6 officer of the court and attorney for them,  
7 have been astounded by the apparent evidence  
8 as to the erudition of education and breeding  
9 and background of Enid Allotey.

10 I think that what I have just said  
11 is not an exaggeration and perhaps will be  
12 supported by the papers that might have  
13 been -- that have been and the probation report  
14 submitted for your Honor's attention.

15 Addoquaye Allotey is a native of Ghana,  
16 an African state. His age is about, I think,  
17 65 at the present time, or thereabouts --

18 DEFENDANT ENID ALLOTEY: 45.

19 MR. GERBER: He is a man who, because  
20 of the colonial responsibilities or connections  
21 of Ghana to Great Britan, has had the advantage  
22 of some -- shall I say -- advanced education.

23 Although English would apparently be  
24 recognized as his mother tongue -- and when  
25 I say "mother tongue" I think I say it

1  
2 incorrectly -- his native tongue -- because  
3 Ghana was a colony of Great Britan and he  
4 has spent some time in Great Britan.

5 He comes from the Ga tribe which,  
6 according to the language of the natives  
7 there is recognized if not as imperial, then  
8 as quasi-imperial amongst their people and  
9 in his situation at the present time we find  
10 that he has what appears to be -- he wears  
11 a Thomas collar indicating some spinal injury  
12 at the upper end of the vertebrae and some  
13 spinal injury which may reflect -- what will  
14 I say -- spinal injury in the lumbar or  
15 lower regions of the spine.

16 The question that is to be resolved by  
17 your Honor -- and it is a serious question to  
18 impose upon anyone man -- judging the conduct  
19 and dispositions or life or part of the life  
20 of another person but I think it is fair to  
21 say that this Court, in pronouncing or considering  
22 the pronouncing of sentence in a situation  
23 against a background such as we find in this  
24 case and the conduct in it, the Court might  
25 very well regard that this mother of eight

1  
2 children, five of whom are minors, she herself  
3 an American citizen, having been born here in  
4 the City of New York, in Harlem, and the man  
5 who is the father of five of those children  
6 and of relatively advanced age with some  
7 aspects of physical disability, whether or not  
8 society will be adequately protected either  
9 by some form of incarceration or whether it  
10 be under some form of supervision or however  
11 the factors may be collated in your Honor's  
12 mind to determine the best way to dispose  
13 of your responsibilities which are not easy  
14 in this case.

15 I personally, if I may appear to be  
16 so importunate and be permitted by your Honor  
17 to offer a suggestion, I think that under the  
18 facts and circumstances of the case, not only  
19 limited to the actual counts of the plea but  
20 to the overall counts and recitals of the  
21 alleged -- recitals of conduct resulting in  
22 the alleged and admitted wrongdoing, that a  
23 probationary term under proper supervision  
24 may be adequate to the protection of the  
25 public in this instance.

1  
2 The mother, because she is restored  
3 to herself and they have their mother restored  
4 to the care of the infant child. The father  
5 because of his physical condition, if that  
6 appeals to the Court to be a matter of some  
7 concern -- apparently, it may be -- and under  
8 any circumstances, because of his superannuated  
9 age -- but to me that age is not superannuated  
10 any more because I advance beyond it -- never-  
11 theless, the question is, whether the public  
12 can be protected under a proper series of  
13 supervision and probation.  
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19 (continued on next page)  
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1  
2 MR. GERBER: (continuing) The  
3 defendant Addoquate Allotey has expressed  
4 to me -- and I pass it on to the Court for  
5 such value as it may entertain in the mind  
6 of the Court and for its consideration --  
7 that from the time he was a teenager in Ghana  
8 and before he had been sentenced -- not  
9 sentenced -- but sent for his education to  
10 England, he had always hoped to be able to  
11 come to the United States and at the present  
12 time expresses that if he has any ambitions  
13 which are overbearing and driving upon him,  
14 it would be to be permitted to join his wife  
15 and rejoin his children here in the United  
16 States.

17 It may be under the circumstances that  
18 such a disposition by your Honor may give us  
19 -- despite whatever the facts may appear to  
20 be in this case and there is a plea of guilty  
21 -- that in addition to our population we may  
22 add a trained mind and an understanding man  
23 of facts that may be of value, particularly  
24 in these troubled times when the understanding  
25 of various peoples amongst themselves and

1  
2 amongst each other may be of some value to  
3 the community also.

4 I think that -- I don't press the  
5 point too hard and if I appear to, may I  
6 be permitted to apologize for it.

7 But, when you have a 65 year old  
8 defendant --

9 DEFENDANT ENID ALLOTEY: He is 45 --

10 MR. GERBER: Oh. I'm making him  
11 really old.

12 Well, 45 -- well, that's the maturity  
13 of life and it affords him the opportunity  
14 of rendering some good service to the community.  
15 But, to a man of 45 to have the restraint of  
16 imprisonment, the maximum of which would be  
17 the term of five years -- your Honor, he has  
18 already put in time in Ghana pending the  
19 extradition and his imprisonment since August  
20 of 1974 so that he has got almost a year and  
21 18 to 20 months in already and under the  
22 circumstances the Court may well be justified  
23 in recognizing a practical, pragmatic disposi-  
24 tion of Mr. Allotey and appoint that upon good  
25 behavior he will not be further molested by

1  
2 our Government and under bad behavior he  
3 would be subject to whatever might be for-  
4 given at this time and whatever might then  
5 be a prompting factor.

6 In other words, I said a lot of  
7 words and what I am trying to say is that  
8 I am pleading for the compassion and under-  
9 standing of this Court of the circumstances  
10 out of which arose the positions of Mr. and  
11 Mrs. Allotey before you and that in your  
12 disposition and calculation and determination  
13 of how best to perform your bound duty --  
14 and you are bound by your duty -- and your  
15 obligation to the community -- and the obliga-  
16 tion to your communities are not to be lightly  
17 wafted aside -- but in the compassion and in  
18 the understanding of your understanding of  
19 the responsibilities in this case, if confine-  
20 ment in some penal institution for one or the  
21 other or both of them may be waived pending  
22 their continued good behavior from here in that  
23 your Honor will have weighed the question in  
24 a solemn way and with the wisdom which comes  
25 from the years of devotion that you have given

1  
2 as a Judge and not only as a minion and  
3 servant of our law but as an attorney before  
4 you assumed those responsibilities, that you  
5 will have well served your duties and respon-  
6 sibilities by an amelioratory warning that  
7 might be on both these defendants and which  
8 might be of service to our communities and  
9 perhaps we can hope and without too much  
10 doubt in my mind, realize the fact that we  
11 have turned a possible waste into a possible  
12 good out of the lives which have demonstrated  
13 compassion for understanding of their respon-  
14 sibilities and the duties that they owe to  
15 the public.

16 I have already said that I would not,  
17 in the heat of any enthusiasm, forget my  
18 obligation of recognizing the Court in its  
19 conduct during this entire trial since I  
20 first appeared before it and I express my  
21 gratitude to Mr. Ryan, though a colleague  
22 on the opposite side of the coin and I am  
23 sure we have discharged our duties under some-  
24 what difficult circumstances, in a responsible  
25 way.

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Thank you, your Honor.

THE COURT: First, Mr. Allotey, is there any reason why sentence should not now be imposed?

DEFENDANT ADDOQUATE ALLOTEY: No, your Honor but I would like to say this --

THE COURT: No. First the question is, should sentence now be imposed? We have not gotten to the question of what sentence should be, yet.

Do you agree that there is no reason why sentence should not now be imposed?

DEFENDANT ADDOQUATE ALLOTEY: Yes.

THE COURT: Is there anything you wish to say with respect to sentence before it is imposed upon you, on your own behalf?

DEFENDANT ADDOQUATE ALLOTEY: Yes, your Honor.

THE COURT: Could you speak up, sir.

DEFENDANT ADDOQUATE ALLOTEY: Yes, your Honor.

I felt it was necessary for me to communicate with you to avoid having to talk --

THE COURT: I have read your excellent

1  
2 letter with close attention as you know.

3 DEFENDANT ABDOQUAYE ALLOTEY: Yes.

4 When we were first arrested in Ghana  
5 technically, we were in house arrest where  
6 we were guarded for five months before we  
7 were committed to be extradited to the United  
8 States, under surveillance all throughout  
9 this period.

10 I have not been very well throughout  
11 this period and I think further confinement  
12 would hurt me more because of an operation  
13 of a hernia which was made when I was a child,  
14 which has always worried me from time to time.  
15 They have not been able to correct it yet. I  
16 had hoped that at least here in the United  
17 States I might be able to have that corrected.  
18 I was told in Ghana that they would have to  
19 remove my spine in order to scrape the calcium  
20 from me to be infused. This was considered  
21 to be a very dangerous operation to take place  
22 in Africa.

23 So, my health is not well and even at  
24 the West Street facility I had to depend upon  
25 kind people to help me in almost everything;

1  
2 in moving around, in getting my food and  
3 everything.

4 So, I am very, very tired and I  
5 wish your Honor would consider to show sympathy  
6 in view of my present condition so that I  
7 should not be confined any further. But, if  
8 it necessary, to be put on probation. I will  
9 endeavor to show that I am not a criminal.

10 It is my childhood dream of coming to  
11 America that perhaps has led to all this and  
12 of course, my nationalistic feelings of con-  
13 ditions in Africa. But, I am not a criminal.

14 So, I beg your Honor to take this into  
15 consideration before you make sentence if you  
16 have to.

17 THE COURT: I should say, Mr. Allotey,  
18 that I don't suppose there is any judge anywhere  
19 who would not always prefer, if he could find  
20 a way to do it, to put a defendant on probation  
21 rather than to order a commitment or in this  
22 case, a further commitment. But, I cannot, in  
23 conscience and, I have thought about this  
24 matter with care and intention but in view of  
25 the magnitude of the offense and what I must say,

1  
2 is the nature of your background, I do not  
3 find it possible to treat this as a matter  
4 which can authorize release now, on probation.

5 Now, I have in mind very much that  
6 although technically the period of detention  
7 that preceeded your coming to this country  
8 may well be due to the offenses here involved,  
9 even though specifically assignable to another  
10 matter, is something to bear in mind and it  
11 has a bearing on sentence and of course, the  
12 length of time that you have already been in  
13 custody is what automatically is applied on  
14 any sentence imposed and I think it is over  
15 seven months and it is somewhere in the order  
16 of two hundred and thirty-three days.

17 What I intend to do is to impose what  
18 appears to me to be a modest sentence pursuant  
19 to the provisions of Section 4203(a)(2) which  
20 enables the Board of Parole to determine your  
21 parole eligibility date at whatever date seems  
22 to them appropriate so that they can, with you,  
23 review the whole background of your confine-  
24 ment to date and the rigors that the confinement  
25 may have imposed upon you beyond those which a

1  
2 man in confinement ordinarily suffers because  
3 of your poor health.

4 But, I fear I must impose the sentence  
5 that I will now impose.

6 Now, I could add the recommendation  
7 that you be sent to one of the federal facili-  
8 ties which -- this is my belief -- that is  
9 most adequately supplied with medical facilities  
10 which I believe is -- what is its technically  
11 correct name -- the federal correctional facility  
12 at --

13 MR. RYAN: Allenwood?

14 THE COURT: Springfield. I believe  
15 that's the one I have in mind, which I believe  
16 has the most fully adequate medical facilities  
17 and there it will be possible for them, not  
18 only for them to perhaps give more thoughtful  
19 diagnosis of your illness but if that is  
20 sensible, to see that that is a factor which  
21 is presented to the Board of Parole for their  
22 consideration along with all other factors.

23 Did you raise your finger, sir?

24 DEFENDANT ADDOQUATE ALLOTEY: I meant  
25 to add while I was talking, that I have an

1  
2 invention --

3 THE COURT: Yes, I saw reference  
4 to that in your papers --

5 DEFENDANT ADDOQUAYE ALLOTEY: (continuing)  
6 -- which is almost ready for the market and  
7 during my confinement I will not be in a  
8 position to set it up because I don't think  
9 they will allow me because this will have  
10 to be in the kit form and I want to be able  
11 to at least give the first commercial samples --

12 THE COURT: Yes. It is a photographic  
13 process --

14 MR. GERBER: It is a photographic  
15 process for the --

16 THE COURT: Yes, I know -- a process for  
17 printing directly to glass --

18 MR. GERBER: That's right, Judge.  
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25 (continued on next page)

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2 DEFENDANT ADDOQUAYE ALLOTEY: So,  
3 I was wondering whether or not there is a  
4 possibility, whether, if the bail is put  
5 up for me for a short period, even thirty  
6 days before I can start the sentence  
7 because I think that would help me a great  
8 deal so I can feel safe that my family would  
9 be able to continue --

10 THE COURT: I am afraid I could not  
11 undertake to authorize that, Mr. Allotey.  
12 I wish I could.

13 MR. GERBER: If your Honor please,  
14 before we pass from this, would you consider  
15 the fact that under the requirements and  
16 demands of the New York Law, the United States  
17 Law, that this defendant has been incarcerated  
18 during the period of his extradition proceeding --

19 THE COURT: As I say, it is not an  
20 adamant amount of time which would be strictly  
21 taken into account in determining what portion  
22 of the sentence now to be imposed can be taken  
23 already to be served.

24 What I have said is that I have taken  
25 it into account in fixing the term of this

1  
2 sentence and would expect that the Board of  
3 Parole would have in mind in its disposition  
4 of the defendant, the same fact which is  
5 reflected in the pre-sentence report which  
6 accompanies the defendant wherever he is  
7 in custody.

8 MR. GERBER: That would be almost  
9 an additional year in Ghana.

10 THE COURT: I quite understand and  
11 that is why I have said what I just finished  
12 saying.

13 On your plea of guilty on count 32  
14 of the indictment, you, Addoquaye Allotey,  
15 are sentenced to the custody of the Attorney  
16 General of the United States or his duly  
17 authorized representative who shall designate  
18 the place of confinement for a period of  
19 three years pursuant to the provisions of  
20 Section 4208(a)(2), to become eligible for  
21 parole at such time as the Board of Parole  
22 may determine.

23 Now, there are thirty-one other counts  
24 I believe, Mr. Ryan.

25 MR. RYAN: The Government moves to

1  
2 dismiss the remaining thirty-seven other  
3 counts.

4 THE COURT: Oh, there are thirty-  
5 seven others.

6 MR. RYAN: Yes.

7 THE COURT: The Government moves to  
8 dismiss all counts of the indictment other  
9 than count thirty-two, then?

10 MR. RYAN: That is correct.

11 THE COURT: Motion is granted.

12 Now, Mrs. Allotey, is there any  
13 reason why sentence should not now be imposed  
14 upon you?

15 DEFENDANT ENID ALLOTEY: No, your  
16 Honor.

17 THE COURT: Is there anything you  
18 wish to say on your own behalf with respect  
19 to sentence before it is imposed?

20 DEFENDANT ENID ALLOTEY: Well your  
21 Honor, I appreciate your kindness in trying  
22 to assist my husband who has had this diffi-  
23 culty with his spine and would be very grateful  
24 if you could give a little better consideration  
25 to me because my son is still missing --

1  
2 THE COURT: He has not been heard  
3 from?

4 DEFENDANT ENID ALLOTEY: No.

5 He is a very obedient person, very  
6 polite. He would never walk away without  
7 saying where he is going and I am at my  
8 wits end about it.

9 At least, if I could be of help to  
10 my husband with his invention -- I couldn't  
11 do it in prison.

12 I think whatever lesson has to be  
13 learned, has been and I see no purpose from  
14 learning it over again.

15 THE COURT: You do not demand equal  
16 treatment?

17 DEFENDANT ENID ALLOTEY: No, not  
18 in this case.

19 THE COURT: The sentence which I  
20 am about to impose is a sentence to the  
21 same number of years but it is a sentence  
22 under Section 3651, under which you will  
23 serve six months in jail.

24 Now, that is an amount of time which  
25 I believe you have already served.

1  
2 DEFENDANT ENID ALLOTEY: Yes.

3 THE COURT: So, that it is tantamount  
4 to your being released in the very near  
5 future, if not immediately.

6 However, the balance of the sentence  
7 beyond the six months is a suspended sentence  
8 which must hang over your head like the  
9 sword of Damocles and a period of probation  
10 is imposed.

11 The sentence then, on your plea of  
12 guilty on count 32 of the indictment, you,  
13 Enid Greaves Allotey, are sentenced to the  
14 custody of the Attorney General of the United  
15 States or his duly authorized representative  
16 who shall designate the place of confinement  
17 for a period of three years pursuant to the  
18 provisions of Section 3651.

19 You will be confined for six months  
20 to a jail-type institution and execution  
21 of the remainder of the sentence, that is  
22 thirty months is suspended and you are placed  
23 on probation for three years subject to the  
24 general conditions of probation provided  
25 by the standing order of this Court.

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2 MR. RYAN: At this time the Government  
3 moves to dismiss the remaining thirty-seven  
4 counts of this indictment with the exception  
5 of count thirty-two.

6 THE COURT: Motion is granted.

7 MR. GERBER: If your Honor please,  
8 since the defendant has been incarcerated  
9 since August the 2nd, 1974, in the United  
10 States and prior to that for a period of  
11 about one year, would the Court, in pronounc-  
12 ing her sentence, also state that those con-  
13 finements are to be considered?

14 THE COURT: I have already sentenced  
15 and I have said what I have said.

16 The time that he has spent over at  
17 West Street I have no control over. He is  
18 entitled to the statutory credit for the  
19 time he has spent in a federal detention  
20 center by reason of this charge and his inability  
21 to make bail.

22 I have already said that I have taken  
23 into account the detention in Africa, although  
24 as I understand it, it was not, except indi-  
25 rectly, connected with this offense. Is that

1  
2 right?

3 MR. GERBER: No. It was in  
4 connection with the demand by our Government --

5 MR. RYAN: The Government confinement  
6 was directly related to the United States  
7 Government's request as to the extradition  
8 proceedings in Ghana and they were held pending  
9 the outcome of the extradition proceedings.  
10 That is correct.

11 MR. GERBER: Is it in the power of  
12 this Court to sentence the defendant to time  
13 served?

14 THE COURT: I decline to do so.

15 MR. GERBER: For the Board of Parole  
16 to consider?

17 THE COURT: That is entirely up to  
18 the Board of Parole.

19 MR. GERBER: I see.

20 MR. RYAN: With respect to the defendant  
21 Addoquaye Allotey, you seem to have some reser-  
22 vation but if that is your Honor's recommenda-  
23 tion I will find out the name of the facility,  
24 phone it to your Honor's chambers and we can  
25 have a recommendation on the record of commitment.

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THE COURT: It is not an order --

MR. RYAN: I understand. It is a request.

THE COURT: On the order I will supply the reason for it.

MR. GERBER: Defendant Addoquaye Allotey -- and I am relaying to the Court his request -- he is wondering, since he has some medical treatment that he is more or less in the groove on at West Street, whether his time can be put in at West Street. I don't know if it is within the competency of this Court --

THE COURT: No. It is for the Attorney General to determine through the Bureau of Prisons.

MR. GERBER: Yes. It now becomes official coming from your Honor.

If that disposes of our business before your Honor may I again repeat my thanks to the Court for the interest your Honor manifested in this case from the very beginning and again my personal thanks and appreciation to Mr. Ryan for the nature of the relationship

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2 that developed between us despite the  
3 fact that we are on opposite sides of  
4 the fence and we are still doing the same  
5 kind of job.  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ADDEQUAYE ALLOTEY,

: 75 CR2168  
: 73 CR 84

Petitioner-Defendant,

-against-

THE UNITED STATES OF AMERICA,

Respondent.

-----X

Plaintiff moves under 28 U.S.C. 2255 to vacate the judgment and sentence imposed on March 21, 1975, on the ground that his guilty plea was not voluntary, that petitioner did not understand the nature of the charge and the consequences of his plea, and that there was no factual basis for the plea of guilty. The motion is in all respects denied.

The transcripts of the plea taking on February 21, 1975 and of the sentence proceeding unanswerably dispose of the contentions now advanced, but the hearing record goes far to fill in the details.

Petitioner and his wife were indicted on January 22, 1973, on thirty-eight counts of mail and wire fraud (18 U.S.C. 1341, 1343). The indictment grew out of two transactions in which defendants, doing business as Stephen and

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Company, imported 4,000 metric tons of cocoa beans from the Republic of Equatorial Guinea (acting through its Camara Oficial Agricola de Comercia e Industria de Fernando Po - "Camara") and resold them to General Cocoa Company of New York. The general scheme charged was a scheme to obtain \$2,225,000 from Camara "by means of false and fraudulent pretenses, representations and promises, well knowing at the time that the pretenses, representations and promises would be and were false and fraudulent when made" (Indictment par. (2)). The specific kind of fraud involved was particularized in Indictment par. (3) and (4):

"(3) It was part of said scheme and artifice to defraud that the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, doing business as Stephen and Company did fraudulently and knowingly, by means of false promises, statements and misrepresentations, obtain two (2) shipments of ... beans from CAMARA ..., without intent to make full payment and thereafter sold and delivered the aforementioned cocoa beans to the General Cocoa Company, 82 Wall Street, New York, New York.

"(4) It was part of the scheme and artifice to defraud that the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, doing business as Stephen and Company would send lulling cables, letters and telegrams to various banking institutions in the United States that acted as agents for CAMARA ... causing them to expect payment in full at a

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future date, when in fact the defendant ENID ALLOTEY and the defendant ADDEQUAYE ALLOTEY, doing business as Stephen and Company were converting to their own use the proceeds realized from the sale of the two (2) shipments of cocoa beans to General Cocoa Company."

It was charged in detail that:

The defendants in September 1970 obtained from Camara authority to import 2000 metric tons of cocoa beans to arrive in November - December 1970, and contracted, on September 14, 1970, to sell the entire shipment to General Cocoa Company at the market price prevailing on the cocoa beans' arrival. Pending the arrival of the first 2,000 ton shipment, on November 2, 1970, defendants agreed to buy a second 2000 metric tons of cocoa beans from Camara at about 34¢ a pound (although the market was then about 30¢. On January 5, 1971, defendants received the documents covering the first shipment from Camara, turned them over to General Cocoa and on January 12, 1971, received from General Cocoa \$858,675, followed, March 18, 1971, by a final payment of \$152,080.52. Defendants paid nothing over to Camara.

Meanwhile (the indictment continued) defendants had on December 24, 1970, sold the second 2000 tons of cocoa

4.  
beans to General Cocoa. On or about March 29, 1971, General Cocoa advanced \$749,874.70 to defendants on the second shipment and that amount defendants paid over two days later to Camara and obtained a release of the documents on the second shipment, which defendants then turned over to General Cocoa. General Cocoa paid to defendants further sums of \$95,518.47 on March 31, 1971, and \$12,785.32 on May 10, 1971.

While the indictment does not clearly allege that, it appears not to be denied or deniable that of the \$1,858,000 and more received by defendants, only about \$750,000 had been paid to Camara.

Petitioner's evidence at this hearing and that of his wife, was that at no time until February 1975 was there any discussion with their counsel of a plea of guilty, that they understood that he was preparing the case for trial, but that at a point they became concerned when their counsel reported that the judge wanted defendants to plead guilty. Petitioner prepared a motion in January 1971, which he says he gave to his lawyer for submission to the court. The motion did not reach the court until after the plea, as an annex to the pre-sentence report. The motion,

5.  
unsigned, asserted that petitioner had acted in good faith throughout, and it outlined petitioner's majestic plan to coordinate the sale of all the African cocoa beans imported by the United States, and in it he blamed the commercial default in paying Camara on the frustration of his broad marketing plans and the consequent market decline. Petitioner's counsel testified that he did not see the motion until he read it as an annex to the pre-sentence report on the day of sentencing.

Petitioner and his wife testified that they had, on counsel's advice, signed authorizations which enabled Government counsel to examine their Bahamas bank records. The Assistant United States Attorney testified that with these authorizations he went to the Bahamas where he gained access to petitioner's bank records, hotel records, and casino records and gathered evidence which demonstrated that, after receiving payment from General Cocoa for the cocoa shipments petitioner and his wife had lived in the Bahamas on a princely scale, had dissipated, principally in gambling at two casinos, somewhere around \$1,000,000, still owed about \$250,000 on account of the losses, and had paid the remaining \$740,000 out of the proceeds of the

6.  
cocoa bean sales, proceeds which had been transferred from the account in New York with the J. Henry Schroeder Banking Corporation to the Bank of Montreal in the Bahamas. A flow sheet (Exhibit D) was prepared tracing \$740,000 of the funds from origin to the Bank of Montreal, and a complex of documentation was marshalled that traced the money thence through Royal Bank of Canada to the Casinos. These data were, the Assistant testified, developed in early February and when he returned to New York, were disclosed on February 19, 1975, to petitioner's counsel.

Petitioner's counsel had been assured by petitioner and his wife that they were innocent, that the case was simply one of commercial default, and that they had always intended to pay. Petitioner's counsel testified that he repeatedly asked petitioner and his wife what had happened to the proceeds of sale, that he had been told by them that that would all be explained later on, and that he had warned petitioner and his wife that if they could not satisfactorily explain what had happened to the proceeds of sale they would be well advised to plead guilty. Counsel believed that the Government would at any time have accepted pleas to one count of the indictment.

7.

The Assistant United States Attorney's February 19th disclosure of the result of the Bahamas investigation, consequently, took petitioner's counsel aback. It seemed clear to petitioner's counsel that the Bahamas story meant that the case was lost. He told the Assistant that the Bahamas story was very different from his clients' version of the facts, that they insisted they always intended to pay Camara. The Assistant said that even if that were so, the Bahamas evidence showed fraud at the second stage of the transactions in that, while the petitioner and his wife were squandering the cocoa bean proceeds in the Bahamas, they were making reassuring promises of payment to Camara's New York agent, Higginbotham of Irving Trust Company, which he conveyed to Camara. The Assistant expressed a willingness to dispose of the case on a plea to a count that rested on this second-phase fraud. Petitioner's counsel said he would discuss the matter with his clients.

Petitioner's counsel met with both petitioner and his wife on the following day, February 20, in the Court House and explained the Bahamas material that the Government had obtained. Petitioner's wife was silent, petitioner brushed the matter aside, insisting that the

8.  
gambling losses were not related to the cocoa beans proceeds. Petitioner's counsel told petitioner that a jury would conclude that the money gambled away was the money received from General Cocoa.

Petitioner, his wife, and their counsel then joined the Assistant United States Attorney and his paralegal assistant. The meeting was a long one. The Assistant the Government's evidence outlined/to petitioner and his wife in detail with particular reference to the second phase when the promises to pay were being made while the money out of which payment would have to come was being squandered in the Bahamas. He emphasized that promises of payment were made when because of the gambling losses defendants knew they could not pay. The flow sheet and the Bahamas documents were exhibited and explained, as was the Higginbotham summary (Exhibit G) of the collection efforts he made for Camara and of the promises defendants made, particularly in the critical February-March 1971 period.

Something like agreement on a plea to a single second phase count was reached, and at that point petitioner raised the question of the effect such a plea would have on his immigration status (cf. 8 U.S.C.1182(a)(9), (h)).

9.

He is not a citizen of the United States, has no immigration visa, and is in the United States by reason of his extradition from Ghana. No one was available to advise on the point, but the meeting reconvened on the next day, and at that time Joseph A. Sena, a criminal investigator of the Immigration and Naturalization Service (INS) was present. He was advised that petitioner had been married to a United States citizen for twenty years and had children born in the United States; that he was a citizen of Ghana and feared that if he returned to that country he would be killed. Mr. Sena advised petitioner that he would not be immediately deported upon release from prison if convicted and imprisoned, but that a detainer would be filed by INS and he would have to give bail; then an exclusion-deportation hearing would be held; the outcome of this hearing could not be guaranteed, and no prediction about its outcome was made.

It was then agreed that there would be a plea to one count of the indictment. Count 33 was first suggested; it was based on a cable of June 12, 1971, sent by Stephen and Company to Camara. That count was rejected because petitioner's wife had earlier taken the position that the

10.

cable was a forgery (Ex. 4, 4A). The discussion then turned to a plea to a superseding indictment or information that would omit paragraph 3 of the indictment (charging that defendants had never intended to pay) and include the substance of paragraph 4, charging that defendants sent cables and letters to banks in the United States who were Camara's agents causing them to expect payment in full when defendants knew that they were converting to their own use the proceeds of the sales of the two shipments. A draft was prepared and rejected, and, finally, it was agreed, at the Assistant United States Attorney's suggestion, that defendants would plead to Count 32.

Count 32 was one of a group of wire fraud counts; the charge was that for the purpose of executing the scheme and artifice to defraud Camara by false and fraudulent pretenses, the defendant transmitted and caused to be transmitted eleven wire communications. The cable of Count 32 was one sent by Camara on February 23, 1971; it urged defendants to confirm an irrevocable letter of credit providing for payment for the second shipment against delivery of shipping documents and it is stated that it was essential that the first shipment be paid for before the

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11.  
following shipment. This followed Higginbotham's having relayed to Camara's Spanish bankers defendant's statement made around February 8, that weighing and inspecting the first shipment had not been completed but that payment should be made in about two weeks if all was in order. Defendants had already received over \$858,000 from General Cocoa on the first shipment and, on February 1-5, had transferred \$600,000 from Schroder New York to Bank of Montreal in the Bahamas. Defendants pointed out in the discussion that they had received, not sent the February 23 cable. It was explained by reference to the Higginbotham memorandum, Exhibit G, that they had caused the cable to be sent by their false assurances to Higginbotham which he sent on to Camara. It was made clear that the gist of the plea was the insincerity of the promises of payment.

Petitioner and his wife presented a very different version of the events of February 20, 21. Broadly they claim that they were told that their plea was just a misdemeanor, that if petitioner's papers respecting his wife's and children's citizenship were in order he would not be deported despite the conviction on his guilty plea, that at the meeting petitioner and his wife read the

12.  
unfiled motion to the United States Attorney, that it was not made clear that they would be pleading to a fraud, and that the plea was agreed to only because it was implicit that they really intended to pay and were pleading to a promise to pay while intending to do so. But petitioner's testimony and his wife's are not consistent with each other. Petitioner understood, he testified, that the Assistant was suggesting a plea based on the assumption that defendants had no intention to pay, and that he heard it said, in discussion with Sena, of the INS, that the charge was a felony charge, but that his counsel kept insisting that the plea would be like pleading to a misdemeanor. He admitted knowing that the High Court of Justice of Ghana, in granting extradition had characterized the case as a fraud case and that both his own counsel and the Assistant United States Attorney had explained the charge to him. Petitioner's wife testified that she had talked to Higginbotham and had promised him that defendants would pay after completion of the FDA inspection and the weighing; if that was considered a fraud, she would plead to it, meaning that she had promised to pay and did intend to, even if the Government wanted to think that she did not

13.

intend to pay. She denied that she was shown the cable pleaded to and seemed to think that the plea was based on the allegedly fraudulent cable of Count 33.

Neither petitioner nor his wife testified truthfully about the meetings of February 20, 21. They quite understood what they were doing in the September 1970 - June 1971 period and negotiated a plea only after they were convinced that the Bermuda evidence made conviction a practical certainty. They were content to be spared the humiliation of pleading to a charge that they had never intended to pay from the very beginning.

The plea taking on February 21, 1975, is very clear. There is no indication whatever that either petitioner or his wife misunderstood the plea or that any promise about deportation was made.

Petitioner asserts that he immediately regretted his plea and sought to reach his counsel so as to have him withdraw the plea, and petitioner's wife says that she tried to get counsel to do so, but was told it was too late, and that it could perhaps be possible if she agreed to testify against petitioner, but that any other effort to withdraw the plea would only result in a harsher sentence.

14.

However, petitioner sent a letter, dated March 18, 1975, to the court which, after discussing black Africa's problems generally continued:

"It is unfortunate, to be sure, Sir, but we were the victims of a concerted action to guarantee our failure. Community National Bank of Staten Island betrayed us and our effort to generate funds to meet our obligation with our creditors (The Republic of Equatorial Guinea) jumped us from the frying pan into the fire. We were duped into believing that by investing funds in a Bahamian Casino owned by Mr. Allen, a Wall Street financier who was to be our prospective financial backer in the Cocoa trade, funds sufficient enough to enable us to meet our obligations could be obtained. Our not having been in a Casino while being unfamiliar with the class of people operating such casinos, this naiveness allowed us to be duped even further while steadily losing funds already designated for the Cocoa payments.

"We were like someone sinking into a quicksand, the more we tried to get out the deeper we sank, but we never did unlawfully, willfully and knowingly devise or intend to devise a scheme or artifice to defraud the Camara of the Government of the Republic of Equatorial Guinea, nor to obtain approximately Two Million, Two Hundred and Twenty-five Thousand Dollars (\$2,225,000) from the Camara of the Government of Equatorial Guinea by means of false and fraudulent pretereses, representations and promises."

When petitioner and his wife appeared for sentencing on March 21, 1975, it was pointed out that the language quoted from the March 18th letter precluded acceptance of

15.

the plea (Tr. 11-17). The sentencing was postponed until 3:00 P.M. so that the matter could be reviewed between petitioner, his wife and their counsel. After the recess attention was directed to the petitioner's protestation of innocence at page 9 of the pre-sentence report and to the two paragraphs from the March 18th letter quoted above (Tr.20). Petitioner's counsel reported that as a result of a review of the matter during the recess petitioner "caused[Exhibit K] to be dictated to his wife, the co-defendant Enid Allotey, who in her hand script prepared two pages." Despite the denials made at the hearing, it is found that petitioner did dictate Exhibit K to his wife and that both signed it. Petitioner's counsel did not dictate it. Exhibit K reiterates the idea that the Bahamas episode was part of a plan to make enough money to pay Camara by what they won at the gaming tables of the Casinos. Exhibit K continues:

"I sincerely wish the Court to know that when I pleaded to paragraph 32 a [i.e., "and"] paragraph 4 of the Indictment, the purpose was to admit that I realized and also recognized my indebtedness and that when I made the promises to repay those debts, I realize that we did not have the money to pay and no idea when such monies could be paid.

16.

"Our effort at that time (when the promises were made) was in order to have Company [i.e., Camara] entertain the payment of such debts and not to force us at a time when we couldn't perform."

Petitioner's wife in her February 26, 1976, statement to the court had put it in these terms:

"Well, to make a long story short I was glad to plead guilty to the ONE SINGLE ITEM IN THIS LONG 38 COUNT 'FRAUD' INDICTMENT which WAS TRUE to the effect that I DID keep, telling the Collection official of the Correspondent Bank to wait as I was going to pay. I didn't think that was illegal anymore than a person would who is pacifying a Bill Collector to wait while making arrangements to meet an obligation about which one felt a sense of responsibility. I've been told that is not legal so I stand corrected and I AM GUILTY. However, our intentions were good and we thought that we also had the responsibility to build up the capital assets of STEPHEN & COMPANY since we started with what the Prosecutor called ZERO DOLLARS!

In a word petitioner knew exactly what he was pleading to, and his, and his wife's, face-saving rhodomontade could not conceal the fact that they had to and were admitting that they had held Camara at bay by making promises of prompt payment at the very time that the means of payment were being squandered in the Bahamas.

After petitioner's counsel presented Exhibit K the

17.

whole matter was reviewed in open court in detail (Tr.22-31); the Assistant United States Attorney elaborated the background and setting of Count 32 with care (Tr.26-30); petitioner and his wife agreed that what was so explained was what they were pleading to, they both answered in the affirmative (Tr. 30). Petitioner, when directly questioned, agreed that there was no reason why sentence should not be imposed upon him (Tr. 48).

Petitioner and his wife contended that during the recess their counsel manifested annoyance with them, that their counsel told them that the judge would crucify them if they did not go along, and that their counsel dictated and had them sign Exhibit K. Petitioner's counsel testified that in the recess he discussed the March 18th letter with petitioner and his wife, told them that if they wished to withdraw the plea he would apply to the court to do so, that if they withdrew the plea they would have to go to trial and that he would represent them unless they wanted other counsel. Petitioner's counsel testified that most of the discussion was between petitioner's counsel and petitioner's wife, that he did advise them that if they went to trial they would not be able to make

a 18.  
out/defense, and that petitioner at first said that he did wish to withdraw his plea, but, then said that he would stand on his plea. Petitioner's counsel testified that he asked petitioner whether he had any message for the court, that petitioner then dictated Exhibit K to his wife and that petitioner's wife advised him that she was not going to withdraw her plea.

Petitioner's and his wife's versions of what occurred during the recess must be rejected, particularly in the light of what was said and explained in open court after the recess.

Petitioner argues that he was not adequately represented. Representation was greatly facilitated by the circumstances that the Government proceeded on an open file basis, that the bitterly contested extradition proceeding had resulted in a complete disclosure of the Grand Jury testimony to petitioner and his wife, and that the Assistant United States Attorney was anxious to press the case on to trial. Hence defense counsel did not have to make motions, his requests were readily granted and reenforced at the pre-trial hearings.

Petitioner's counsel, Gustave A. Gerber, was

19.  
retained, and appeared for petitioner and his wife. It was emphasized to the petitioner and his wife on two occasions that if the slightest conflict of interest appeared, they or either of them should bring it to the Court's attention and additional counsel would be appointed (at no cost to them). They insisted on continuing with Mr. Gerber, despite delay in the trial.

There is no ground for arguing that the representation was inadequate. It was suggested that counsel had not interviewed any witnesses to speak of and evidently did not plan to call any witnesses other than his clients. But, as counsel pointed out, the defense had to rest on the testimony of petitioner and his wife; the transactional facts were not contestable; everything depended on whether petitioner and his wife could explain them away - and in the light of the Bahamas evidence there was little chance that they could do so.

It must be concluded that petitioner's plea of guilty was entered in a full understanding of the charge and of his own guilty complicity, and that the plea was not induced by any promise that petitioner would be safe from exclusion and deportation if he pleaded, or by any

20.

representation that the charge being pleaded to was no worse than a misdemeanor, or that the plea did not admit criminal responsibility.

It is,

ORDERED that the motion of petitioner to vacate the judgment of conviction entered March 21, 1975, and to set aside the plea of guilty entered February 21, 1975, is denied.

Brooklyn, New York

August 31, 1976.

  
U. S. D. J.

United States of America vs.

## United States District Court for

DEFENDANT

Eastern District of New York

725601 Ryan

cf 3-21-75

ADDEQUAYE ALLOTEY doing business  
as Stephen and Company

DOCKET NO.

73 CR 84

## JUDGMENT AND PROBATION COMMITMENT ORDER

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH	DAY	YEAR
3	21	1975

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

G. Cerber, Esq.

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTY

in Count 32

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☐ GUILTY.FINDING &  
JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S.C. Sec. 1343, 2 in that on or about February 23, 1971, the defendant with another, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so did transmit and cause to be transmitted in interstate and foreign commerce by means of wire communication, that is by cables, telegrams and telephone communications, certain writings, signs, signals and sounds, to wit: a cable to Costephen, New York,

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

3 years pursuant to the provisions of Sec. 4208(a)(2) to become eligible for parole at such time as the Board of Parole may determine. On motion of Asst. U.S. Atty. Ryan counts 1 to 31 inclusive and counts 33 to 38 inclusive are dismissed.

SENTENCE  
OR  
PROBATION  
ORDERSPECIAL  
CONDITIONS  
OF  
PROBATIONADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT  
RECOMMEN-  
DATION

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge☐ U.S. Magistrate

CERTIFIED AS A TRUE COPY ON

THIS DATE 3-21-75

By \_\_\_\_\_

( ) CLERK

( ) DEPUTY

Date \_\_\_\_\_

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ADDEQUAYE ALLOTEY

-vs-

THE UNITED STATES OF AMERICA

NOTICE OF APPEAL

Civil Action No.

75 C 2168

Notice is hereby given that ADDEQUAYE ALLOTEY

hereby appeals to the United States Court of Appeals for the  
Second Circuit from the (final judgment) entered in this proceeding  
on the 31st day of August, 1976.

DATED: Brooklyn, New York

Sept. 2, 1976

NAME

Addequaye Allotey  
2304 GRAND AVE. (APT 10)

ADDRESS

BROOKLYN, NEW YORK 10463

234 97 28

telephone no.